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11 **UNITED STATES BANKRUPTCY COURT**  
12 **DISTRICT OF NEVADA**

13 In Re:

14 **SUBMARINA, INC.**

15 \_\_\_\_\_  
16 **KERENSA INVESTMENT FUND 1, LLC**

17 Debtor.

18 **CASE NO: BK-S-12-22097-MKN**  
19 (Lead Case)

20 Chapter 11

21 JOINTLY ADMINISTERED

22 CASE NO: BK-S-11-24352-MKN

23 **TRUSTEE’S COMBINED MOTION**  
24 **FOR AN ORDER TO SELL ASSETS**  
25 **FREE AND CLEAR OF ALL LIENS,**  
26 **CLAIMS, AND INTERESTS, FOR**  
27 **APPROVAL OF ASSUMPTION AND**  
28 **ASSINGMENT OF CERTAIN**  
**EXECUTORY CONTRACTS, FOR**  
**APPROVAL OF BIDDING**  
**PROCEDURES AND BID**  
**PROTECTIONS**

**PROPOSED HEARING DATE:**  
July 12, 2017

**PROPOSED HEARING TIME:**  
9:30 A.M.

Estimated Time: 1 hour

1 W. DONALD GIESEKE, Chapter 11 Trustee (“Trustee” or “Chapter 11 Trustee”) for  
2 the Estate of SUBMARINA, INC. (“Debtor”) moves this Court, pursuant to sections 105, 363,  
3 365, 503 and 507 of the Bankruptcy Code, Rules 2002, 6004, and 6006 of the Federal Rules of  
4 Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 6004 of the United States  
5 Bankruptcy Court for the District of Nevada (the “Local Rules”), for the entry of an order  
6 (“Sale Order”) substantially in the form attached hereto as **Exhibit 4**:  
7

- 8 i. approving proposed auction and bid procedures (the “Bid Procedures”) and  
9 proposed bid protections in connection with the sale (the “Sale”) of certain assets  
10 of the Debtor, including the Debtor’s franchise related assets (the “Assets”, as more  
11 particularly defined below and in the proposed Asset Purchase Agreement (the  
12 “Asset Purchase Agreement”, attached as **Exhibit 1**);  
13  
14 ii. establishing procedures for the assumption and assignment of executory contracts  
15 and unexpired leases, including notice of proposed cure amounts (the “Assumption  
16 and Assignment Procedures”), and approving the form and manner of notice of the  
17 proposed assumption and assignment of executory contracts and unexpired leases  
18 in the form attached hereto as **Exhibit 2** (the “Assumption and Assignment  
19 Notice”); and  
20  
21 iii. approving the form and manner of notice of the Auction and the Sale Hearing (the  
22 “Auction and Sale Hearing Notice”) attached hereto as **Exhibit 3**; and  
23  
24 iv. entering an order (the “Sale Order”), substantially in the form attached hereto as  
25 **Exhibit 4**:  
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- a. authorizing the Sale to the successful bidder at the Auction, free and clear of all liens, claims and encumbrances, except for any liabilities expressly assumed in the Asset Purchase Agreement;
- b. authorizing the assumption and assignment of certain executory contracts in connection with the Sale;
- c. waiving the 14-day notice periods in Bankruptcy Rules 6004(h) and 6006(d);
- d. finding the successful purchaser of the Assets a “good faith purchaser” under Section 363(m) of the Bankruptcy Code; and
- e. granting certain related relief as described herein and in the Sale Order.

In support of this Motion, the Trustee respectfully states as follows:

**BACKGROUND AND JURISDICTION**

1. On October 25, 2012 (the “Petition Date”), Debtor Submarina, Inc. (“Debtor” or “Submarina”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. [ECF No. 1]. No committee of unsecured creditors has been appointed.

2. Submarina is a franchisor of submarine sandwich restaurants.

3. Both before and after the Petition Date, Submarina has been embroiled in protracted disputes with franchisees.

4. On January 17, 2017, the Court entered its *Memorandum Decision on Motion to Reconsider Order On Emergency Motion to Extend Time in Which to File an Amended Plan of Reorganization and Disclosure Statement* [ECF No. 578, the “Memorandum Decision”].

The Memorandum Decision, incorporated herein, set forth the history of this case, and ultimately appointed a Chapter 11 Trustee, finding:

1 Continued operation of the business may be financially possible  
2 but only prolonged and continuous litigation is assured. At this  
3 juncture, appointment of a Chapter 11 trustee to independently  
4 examine the viability of the franchise operation, in lieu of  
5 immediately converting the proceedings to a Chapter 7 liquidation,  
6 offers the best hope of producing an objectively reasonable basis  
7 for reorganization. The court having considered the record and  
8 history in this matter concludes that such appointment is in the best  
9 interests of creditors, the bankruptcy estates, and all parties in  
10 interest, including the franchisees, within the meaning of Section  
11 1104(a)(2).

12 *See* ECF No. 578 at 27:17-20.

13 5. On February 8, 2017, W. Donald Gieseke was appointed, and remains, the duly  
14 acting Chapter 11 Trustee [ECF No. 592].

15 6. Since appointment, the Trustee has (among other things) engaged in  
16 discussions with the Debtor's former management, franchisees of the Debtor, potential  
17 purchasers of the Debtor's assets, and other interested parties in the Bankruptcy Case.

18 7. The Trustee has determined, in its business judgment, that a sale of  
19 substantially all of the Debtor's franchise related assets is the best avenue to maximize returns  
20 to creditors, limit the ongoing litigation between the Debtor and its franchisees and the related  
21 claims against the estate, and provides the greatest opportunity for the future success of the  
22 business and its franchisees.

23 8. After appointment, the Trustee identified and contacted several potential  
24 purchasers and invited these parties to make a presentation to the Debtor's franchisees. These  
25 presentations took place between April 12, 2017 to April 18, 2017. At the close of  
26 presentations, the Trustee invited the franchisees to submit comments and invited the potential  
27 purchasers to make offers.

28 9. On May 3, 2017, the Trustee received a proposal from Sinelli Concepts  
International, Inc. (or its assignee, the "Proposed Buyer") to purchase certain assets of the

1 Debtor. The Trustee has continued to negotiate with the Proposed Buyer and this Motion, and  
2 the sale proposed herein, is a product of those negotiations. The Trustee has also engaged in  
3 discussions with potential alternative purchasers and believes a sale of substantially all of the  
4 Debtor's franchise related assets may produce an active auction environment.  
5

6 10. The Trustee submits a prompt sale is important to preserve the value of the  
7 Debtor's operations as a going concern, safeguard the assignability of the Debtor's current  
8 franchise agreements (some of which expire soon), and ensure that existing franchisees have  
9 the support needed to continue viable operations at the franchisee level. Given the prolonged  
10 dispute between Submarina and its franchisees and the Debtor's limited cashflow to continue  
11 operations for substantially longer, the Trustee is requesting this Motion be heard promptly  
12 and on shortened time if necessary. The Trustee proposes the hearing on this matter be held  
13 on July 12, 2017 at 9:30 a.m., or as soon thereafter as reasonably practicable.  
14  
15

16 11. This Court has jurisdiction of this Motion under 28 U.S.C. §§ 157 and 1334.  
17 This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (K), (M), (N), and/or (O).  
18

### **The Proposed Sale**

19 12. The Trustee proposes to sell the Assets free and clear of liens, claims and  
20 encumbrances and assume and assign certain executory contracts in connection with the Sale.  
21 The Trustee proposes an auction process to provide an opportunity for parties to bid on the  
22 Debtor's assets. The proposed Bidding Procedures are designed to provide the Trustee with  
23 the flexibility necessary to allow the Trustee to maximize the value of the Debtor's assets.  
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### **The Proposed Bidding Procedures**

26 13. The Trustee is requesting that the Court follow certain bidding procedures for  
27 the sale of the Assets with a proposed final sale hearing date of July 12, 2017 at 9:30 a.m., or  
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1 as soon thereafter as reasonably practicable. The following are the Trustee’s proposed bidding  
2 procedures (“Bidding Procedures”):

3 14. Participation Requirements. Unless otherwise ordered by the Court, to  
4 participate in the bidding process, each person or entity (each, an “Interested Party”) will be  
5 required to deliver (unless previously delivered) the following materials to the Trustee or  
6 Trustee’s counsel: (a) an executed confidentiality agreement in a form agreeable to the  
7 Trustee, which will inure to the benefit of the Successful Bidder; (b) a statement and factual  
8 support demonstrating to the Trustee’s satisfaction that the Interested Party has a bona fide  
9 interest in purchasing the Assets; (c) sufficient information, as determined by the Trustee, to  
10 allow the Trustee to determine that the Interested Party has the financial resources and  
11 authorizations to complete a purchase of the Assets, including financial disclosures acceptable  
12 to the Trustee in its business judgment and discretion; and (d) either a description of any  
13 proposed amendment or change to the Asset Purchase Agreement attached as Exhibit 1 or a  
14 marked redline version of the Asset Purchase Agreement (the “Marked Agreement”) showing  
15 any proposed amendment or change. A party that delivers the foregoing information to the  
16 Trustee is hereinafter referred to as a “Potential Bidder.”

17 15. Determination by the Trustee. The Trustee will determine whether any party is  
18 a Potential Bidder. The Trustee is not required to provide information relating to the Debtor to  
19 any person who is not a Potential Bidder.

20 16. Due Diligence. The Trustee will coordinate all reasonable requests for  
21 additional information and due diligence materials from Potential Bidders. In the event any  
22 such due diligence material is in written form and has not previously been provided to any  
23 other Potential Bidder, the Trustee will be authorized to provide such materials to all Potential  
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1 Bidders. The Trustee is also authorized to provide a copy of any Marked Agreement to all  
2 Potential Bidders and will provide a copy of any Marked Agreement to the Proposed Buyer  
3 within 24 hours of receipt.  
4

5 17. Bid Deadline. On or before seven (7) calendar days prior to the proposed  
6 Auction and Sale Hearing, i.e., July 5, 2017 (the "Bid Deadline"), a Potential Bidder that  
7 wishes to make a bid at the Auction is required to deliver written copies of its bid to the  
8 Trustee and the Trustee's counsel.

9 18. Bid Requirements. All bids must:  
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- 11 a. identify the legal name of the Potential Bidder (including any equity holders or  
12 other financial backers, if the Potential Bidder is an entity formed for the  
13 purpose of consummating the Sale);
- 14 b. provide that the Potential Bidder offers to purchase the Assets at the purchase  
15 price and upon the terms and conditions set forth in the form of Asset Purchase  
16 Agreement attached as Exhibit 1, or provide a redlined Marked Agreement  
17 showing any proposed amendment or change thereto;
- 18 c. state that all necessary filings under any regulatory or other laws will be made  
19 and paid for by the Potential Bidder;
- 20 d. be a formal, binding and unconditional agreement that is not subject to any due  
21 diligence and is irrevocable until the first Business Day following the closing of  
22 the Sale Transaction;
- 23 e. include a commitment to close the transactions contemplated by the bid no later  
24 than thirty (30) days after the Sale Hearing;
- 25 f. not entitle such Potential Bidder to a breakup fee, termination fee, expense  
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1 reimbursement or similar type of payment or reimbursement and that also  
2 includes a waiver of any substantial contribution administrative expense claim  
3 under section 503(b) of the Bankruptcy Code related to the Sale of Debtor's  
4 Assets;  
5

6 g. be accompanied by a good faith deposit in the amount of \$25,000.00,  
7 refundable if the Potential Bidder is not the Successful Bidder at the Auction;  
8 and

9 h. be received no later than the Bid Deadline.

10  
11 19. A Potential Bidder must accompany its bid with:

12 a. satisfactory evidence of available cash, a commitment for financing (not subject  
13 to any conditions) or such other evidence of ability to consummate the Sale and  
14 provide adequate assurance of future performance of all obligations to be  
15 assumed in the Sale as the Trustee may reasonably request;

16  
17 b. a copy of a board resolution or similar authorization document demonstrating  
18 the Potential Bidder has the authority to make a binding and irrevocable bid on  
19 the terms proposed;

20  
21 c. a covenant to cooperate with the Trustee to provide relevant information  
22 regarding the Potential Bidder's operations reasonably required by the Trustee  
23 to assess the Potential Bidder's ability to perform;

24  
25 d. if the bid includes a Marked Agreement or a summary of any proposed  
26 amendment or change to the Asset Purchase Agreement, a signed statement that  
27 such bid is irrevocable through the closing of the Sale;

28 e. any other documentation that is reasonably requested by the Trustee.



1           20.     The Trustee will, in its business judgment and discretion determine, whether a  
2 bid received from a Potential Bidder will be deemed a qualified bid (“Qualified Bid”) and such  
3 party a qualified bidder (“Qualified Bidder”).  
4

5           21.     The Trustee may value a Qualified Bid based upon any and all factors that the  
6 Trustee deems pertinent, including, among others:

- 7           a.     the purported amount of the Qualified Bid, including non-cash consideration, if  
8                 any;  
9           b.     the value to be provided to the Trustee under the Qualified Bid, including the  
10                net economic effect upon the Debtor’s estate if the bid were accepted;  
11           c.     contingencies with respect to the Sale Transaction and the ability to close the  
12                proposed Sale Transaction on a basis acceptable to the Trustee, and any  
13                incremental costs to the Trustee in closing delays;  
14           d.     the ability to obtain any regulatory or other approvals for the proposed  
15                transaction;  
16           e.     the ability to provide adequate assurance of future performance to the  
17                counterparties of any assumed executory contracts, including the ability to  
18                provide support to the Debtor’s franchisees; and  
19           f.     any other factors the Trustee may deem relevant.  
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23           22.     Auction. If at least one Qualified Bidder, in addition to the Proposed Buyer,  
24 makes a Qualified Bid by the Bid Deadline, the Trustee will ask the Court to proceed with the  
25 Auction at the Sale Hearing. The Trustee submits that only (a) Qualified Bidders and (b)  
26 Potential Bidders who submitted a bid that satisfies the requirements of a Qualified Bid and  
27 are invited by the Trustee in its discretion to participate in the Auction, should be eligible to  
28

1 participate in the Auction. The Trustee may, in its discretion, withdraw some or all of the  
2 Assets from the Auction or sale at any time before entry of an order approving a Sale of the  
3 Assets.  
4

5 23. The Trustee proposes the Auction take place at the United States Bankruptcy  
6 Court, District of Nevada, Foley Federal Building, Courtroom 2, Third Floor, 300 Las Vegas  
7 Boulevard South, Las Vegas, Nevada, 89101, on July 12, 2017, at 9:30 a.m. (prevailing  
8 Pacific Standard Time), or at such other date and time as the Court may direct.  
9

10 24. Unless otherwise ordered by the Bankruptcy Court, only a Qualified Bidder or  
11 a Potential Bidder, will be eligible to participate at the Auction.

12 25. At the Auction, participants will be permitted to increase their bids and improve  
13 their terms; provided that any such increased or improved bid or combination of bids must be  
14 a Qualified Bid (except that the Bid Deadline will not apply). Bidding for the Assets will start  
15 at the \$500,000 purchase price in the Stalking Horse Bid plus \$25,000 (the "Minimum  
16 Overbid").  
17

18 26. The Trustee proposes that after the Minimum Overbid, bid increments for any  
19 additional bids start at a minimum of \$10,000.  
20

21 27. Only bona fide secured creditors with an allowed secured claim against the  
22 Debtor's estate will be allowed to credit bid at the Auction.

23 28. Return of Good Faith Deposit. The Good Faith Deposits of all Qualified  
24 Bidders will be held in escrow by the Trustee and while held in escrow will not become  
25 property of the Debtor's bankruptcy estate unless released from escrow pursuant to further  
26 order of the Bankruptcy Court. The Trustee will retain the Good Faith Deposits of the  
27 Successful Bidder(s) until the closing of the Sale Transaction unless otherwise ordered by the  
28

1 Bankruptcy Court. The Good Faith Deposit of any party other than the Successful Bidder will  
2 be returned no later than the first Business Day following the closing of the Sale Transaction  
3 unless otherwise ordered by the Bankruptcy Court. At the closing of the Sale Transaction  
4 contemplated herein, the Successful Bidder will be entitled to a credit for its Good Faith  
5 Deposit (not including interest accrued thereon).  
6

7 29. The Trustee believes that the proposed Bidding Procedures provide an  
8 appropriate framework for selling the Debtor's assets and will enable the Trustee to fully  
9 review, analyze and compare all bids received to determine which bid is in the best interest of  
10 the Debtor's estate. In order to incentivize the sale, the Trustee is seeking approval of a  
11 breakup fee or expense reimbursement to the Proposed Buyer not to exceed \$15,000.  
12

13 **Proposed Buyer and Bid Protections**

14 30. The proposed 'stalking horse' Asset Purchase Agreement is attached as **Exhibit 1**.  
15 The proposed buyer is Sinelli Concepts International, Inc., or its assignee (the "Proposed  
16 Buyer"). The Proposed Buyer is deemed to be a Qualified Bidder and the Proposed Buyer's  
17 bid is deemed a Qualified Bid.  
18

19 31. As set forth in the Asset Purchase Agreement, certain bid protections are afforded  
20 to the Proposed Buyer. The bid protections set forth in the Asset Purchase Agreement are  
21 limited to a breakup fee or expense reimbursement for the Proposed Buyer's out of pocket  
22 expenses, capped at \$15,000 (the "Expense Reimbursement").  
23

24 32. Approval of the modest Expense Reimbursement proposed is well grounded.  
25 Courts in this district generally defer to the business judgment of the trustee on such matters if  
26 the proposal is aimed at maximizing the value of the assets sold. *See In re Village Hotel*  
27 *Investors, LLC*, Case No. 08-13043-LBR (Bankr. D. Nev. June 19, 2009) (breakup fee and  
28

1 expense reimbursement, “fair and equitable, reflecting the exercise of [Trustee’s] considered  
2 business judgment, and are reasonably required in order to maximize the value received for the  
3 sale of the Assets.”); *see also In re Xyience Inc.*, Case No. 08-10474-MKN (Bankr. D. Nev.  
4 March 6, 2008) (breakup fee of \$40,000 appropriate as exercise of debtor’s business  
5 judgment).  
6

7 33. The Expense Reimbursement proposed to the Proposed Buyer relates to the post-  
8 petition Asset Purchase Agreement, and would be an administrative expense of Debtor’s estate  
9 with priority over any and all administrative expenses specified in Sections 503(b) and 507(b)  
10 of the Bankruptcy Code. *See* 11 U.S.C. § 503(b)(1)(A); *see also Microsoft Corp. v. DAK*  
11 *Industries, Inc. (In re DAK Industries, Inc.)*, 66 F.3d 1091, 1094 (9th Cir. 1995).  
12

13 34. By participating in the due diligence process, conducting negotiations with the  
14 Trustee in good faith, and entering the proposed Asset Purchase Agreement, the Trustee  
15 submits that the Proposed Buyer has helped the Trustee establish baseline bid, including terms  
16 and a baseline price, that should serve as a guide for other potential bidders. The Trustee  
17 believes such efforts will ultimately benefit the Debtor’s estate and, as an exercise of business  
18 judgment, that the Proposed Buyer should be reimbursed (up to a maximum of \$15,000) for its  
19 efforts in creating what is anticipated to be an active auction environment.  
20  
21

### 22 **Material Terms of the Proposed Asset Purchase Agreement**

23 35. Set forth below is a summary of the material terms of the Asset Purchase  
24 Agreement in accord with Local Rule 6004(5). This description is intended as a summary of  
25 certain salient terms only, and is subject to (and qualified in its entirety by) the Asset Purchase  
26 Agreement, which should be reviewed independently and thoroughly. Capitalized terms used  
27 in the subsections below have the meaning given them in the Asset Purchase Agreement.  
28

- 1 a. **Purchase Price.** Subject to the terms of the Asset Purchase Agreement, the  
2 Purchase Price to be paid for the Purchased Assets shall be \$500,000.00. No  
3 deposit has been required from the Proposed Purchaser.
- 4 b. **Assets to be Sold, including Avoidance Actions.** The Purchased Assets in the  
5 Asset Purchase Agreement include, the Debtor's: (1) Intellectual Property  
6 (including Trademarks and Copyrights); (2) telephone numbers, URLs, Domain  
7 Names, social media accounts; (3) Trade Secrets; (4) all Franchise Agreements  
8 listed on Schedule 2.1(d) of the Asset Purchase Agreement (as may be modified  
9 by the Proposed Buyer prior to the Closing); (5) the Debtor's Accounts  
10 Receivable arising out of any Assumed Contract or Assumed Franchise  
11 Agreement, including those listed on Schedule 2.1(h) of the Asset Purchase  
12 agreement; (5) all goodwill and other intangible assets, including the goodwill  
13 associated with the Debtor's Intellectual Property; (6) all Documents related to  
14 the Purchased Assets; and (7) all Causes of Action, demands, and judgments  
15 listed on Schedule 2.1(h); all Causes of Action directly related to any pre-  
16 Closing breach of an Assumed Contract and/or Assumed Franchise Agreement;  
17 and all Avoidance Actions against a SUBMARINA Franchisee of an Assumed  
18 Franchise Agreement.
- 19 c. **Excluded Assets/Retention of Causes of Action and Avoidance Actions.**  
20 The proposed Sale does not include, and specifically excludes, the following  
21 Excluded Assets: (1) the Trustee's bank and other depository accounts and  
22 lockboxes; (2) all Contracts other than the Assumed Contracts; (3) all  
23 Avoidance Actions, except those listed on Schedule 2.1(h) of the Asset  
24 Purchase Agreement or otherwise included in Section 2.1(h) of the Asset  
25 Purchase Agreement, the Debtor or its estate may hold against any Person or  
26 Persons; (4) all Causes of Action, demands, and judgments, belonging to the  
27 Debtor against any Person or Persons, except listed on Schedule 2.1(h) or  
28 otherwise included in Section 2.1(h) of the Asset Purchase Agreement; (5) the  
Miscellaneous Accounts Receivable; (6) all Documents relating primarily to an  
Excluded Asset or an Excluded Liability; and (7) all other assets not specially  
sold under the Asset Purchase Agreement.
- d. **Assumption and Assignment of Certain Contracts and Franchise  
Agreements.** Schedule 2.1(d) of the Asset Purchase Agreement includes a list  
of the executory contracts and leases, including the franchise agreements, that  
are proposed to be assumed and assigned to the Purchaser as part of the  
proposed sale. Within five (5) business days of the filing of this Sale Motion,  
the Seller will prepare and file with the Bankruptcy Court an Assumed Contract  
List and Cure Schedule identifying the each proposed Assumed Contract and  
Assumed Franchise Agreement and the estimated and proposed Cure Amounts  
for each. The Assumed Contract List and Cure Notice will be served on each  
counterparty to the proposed Assumed Contracts and Assumed Franchise  
Agreements reflected therein. Any counterparty to a Contract or Franchise  
Agreement included on the Assumed Contract List shall have until two (2) days

1 prior to the Sale Hearing to file with the Bankruptcy Court and serve on the  
2 Purchaser and Seller an objection to the proposed Cure Amount listed on the  
3 Cure Schedule and to the adequate assurance of future performance by  
4 Purchaser. All Contracts and Franchise Agreements to which Debtor is a party,  
5 or by which the Debtor or any of its assets or properties are bound, that are not  
6 listed on the Assumed Contract List are deemed to be “Excluded Contracts”  
7 under the Asset Purchase Agreement. The Purchaser is obligated to pay all  
8 Cure Amounts related to any Assumed Contract or Assumed Franchise  
9 Agreement (including, for avoidance of doubt, amounts in excess of the  
10 estimated amounts on the Cure Schedule). At any time prior to the Closing  
11 Date, Purchaser may remove contracts from the Assumed Contract List by  
12 sending written notification to the Seller and within twenty-four hours of  
13 receipt of the notice, the Seller shall file such notice with the Bankruptcy Court  
14 and serve it on the non-debtor counterparties. Purchaser shall assume all  
15 obligations regarding the demonstration of adequate assurance of future  
16 performance required with respect to the Assumed Contracts under Section 365  
17 of the Bankruptcy Code.

- 18 e. **Closing.** Subject to the specific terms of the Asset Purchase Agreement, the  
19 Closing of the purchase and sale of the Purchased Assets is anticipated to take  
20 place as promptly as practicable, and at no time later than 30 calendar days  
21 following the Sale Order becoming a Final Order.
- 22 f. **Representations and Warranties of Seller.** Subject to the specific terms of  
23 the Asset Purchase Agreement, the Seller is making the following  
24 Representations and Warranties: (1) that, subject to Bankruptcy Court approval  
25 and entry of a final Sale Order, the Seller has the full power to execute the  
26 Asset Purchase Agreement and its related documents; (2) that, on the Closing  
27 Date, the Seller will transfer title of the Purchaser to the Purchased Assets free  
28 and clear of all Encumbrances; and (3) that, other than the foregoing, the  
representations and warranties provided by the Seller are limited, that the sale is  
made without recourse, and the Purchased Assets are being sold “As Is” and  
“With All Faults.”
- g. **Representations and Warranties of Purchaser.** Subject to the specific terms  
of the Asset Purchase Agreement, the Purchaser is making the following  
Representations and Warranties: (1) the Purchaser has the full power to execute  
the Asset Purchase Agreement and its related documents; (2) that execution of  
the Asset Purchase Agreement will not: (a) result in the breach or default under  
the Purchaser’s organizational documents or violate any Order or Legal  
Requirement affecting the Purchaser; (b) require additional approval other than  
filings with the Bankruptcy Court; (3) that there is no pending or anticipated  
litigation between any Person or Governmental Authority against or relating to  
the Purchaser or its assets which, if adversely determined, would reasonably be  
expected to have a material adverse effect on the Purchaser’s performance  
obligations in the Asset Purchase Agreement; (4) that the Purchaser has not

1 paid, or agreed to pay, any fee or commission to any broker, finder or  
2 intermediary related to the Asset Purchase Agreement; (5) that, at the Closing  
3 Date, the Purchaser will have all funds necessary to close the transaction,  
4 including payment of the Purchase Price; and (6) that the Purchaser does not  
5 hold, directly or indirectly, any beneficial ownership interest in the Debtor, its  
6 Affiliates, or its securities.

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- h. **Conditions to Closing (both parties)**. The obligation of both Purchaser and Seller to close is contingent on the Bankruptcy Court's entry of a Sale Order and that the Sale Order shall have become a Final Order, except that the Purchaser may waive this condition in its sole and absolute discretion without notice or consent to any parties in interest in the Bankruptcy Case or the need for further approval of the Bankruptcy Court. The sale is contingent on the Sale Order: (a) authorizing the sale of the Purchased Assets free and clear of all liens, claims, and encumbrances (except any liabilities assumed by Purchaser); (b) authorizing assumption of all Assumed Contracts, including the Assumed Franchise Agreements; (c) determining that the Purchaser is a good faith buyer under Section 363(m) of the Bankruptcy Code; (d) determining that the offer made by Purchaser is the highest or best offer for the Assets; and (e) authorizing the Seller to execute any documents or perform any tasks to effectuate and consummate the sale.
- i. **Conditions to Seller's Obligation to Close**. The obligation of the Seller to close the sale transaction is further contingent on the following: (a) that the representations and warranties of the Purchaser are true and correct in all material respects as of the Closing Date; (b) that the Purchaser has complied with all obligations of the Purchaser prior to the Closing; and (c) payment of the Purchase Price.
- j. **Conditions to Purchaser's Obligation to Close**. The obligation of the Purchaser to close is further contingent on the following: (a) that the representations and warranties of the Seller are true and correct in all material respects as of the Closing Date; (b) that the Seller has complied with all obligations of the Seller prior to the Closing; and (c) delivery by the Seller of executed copies of the Bill of Sale, Assignment and Assumption of Franchise Agreements, Assignment of Trademarks, and each other Ancillary Document to which Seller is a party.
- k. **Breakup Fee**: Subject to approval of the Bankruptcy Court, Purchaser shall be entitled to a termination or breakup fee equal to the lesser of (i) Purchaser's expenses incurred in connection with the Asset Purchase agreement and sale of Debtor's assets, and (ii) \$15,000.
- l. **Termination Rights**. The Asset Purchase Agreement may be terminated in the following circumstances: (i) by mutual consent of the Seller and Purchaser; (ii) automatically if a Governmental Authority enters a final and non-appealable

1 order restraining, enjoining or prohibiting the transfer of the Purchased Assets;  
2 (iii) automatically if the Bankruptcy Court approves an Alternative Transaction;  
3 (iv) by either the Purchaser or the Seller if the Sale Order is appealed prior to  
4 the Closing; (v) by the Purchaser if the Seller fails to cure a material breach  
5 within ten (10) calendar days of receipt of notice of breach; (vi) by the  
6 Purchaser if the Bankruptcy Court has not entered the Sale Order by July 31,  
7 2017; (vii) by the Purchaser if Purchaser removes any Franchise Agreement  
8 from the Assumed Contract List on account of an inability to resolve a  
9 franchisee's claim or objection pursuant Section 2.5 of the Asset Purchase  
10 Agreement, and if such removal materially affects the value or integrity of the  
11 franchise system as a whole. For avoidance of doubt, removal of any Franchise  
12 Agreement with a remaining term of more than 6 months will be considered  
13 "material" for purposes of this provision; (viii) by the Seller if the Purchaser  
14 fails to cure a material breach within ten (10) calendar days of receipt of notice  
15 of breach; (ix) by the Seller if the conditions precedent to Closing set forth in  
16 Section 8.2 of the Asset Purchase Agreement have been not been satisfied or  
17 waived; and (x) by the Seller if the Purchaser breaches its obligations to  
18 consummate the sale by the Closing.

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26 **The Proposed Purchaser is a Good Faith Purchaser under 11 U.S.C. § 363(m)**

27 36. A good faith finding under 11 U.S.C. § 363(m) is appropriate. A "good faith  
28 purchaser" is one who buys in "good faith" and "for value." *T.C. Investors v. Joseph (In re M  
Capital Corp.)*, 290 B.R. 743, 746-47 (9th Cir. BAP 2003). "Typically, lack of good faith is  
shown by "fraud, collusion between the purchaser and other bidders or the trustee, or an  
attempt to take grossly unfair advantage of other bidders." *Id.* at 746 (internal quotation and  
citation omitted). Here, to the best of the Trustee's knowledge, the Proposed Buyer is not an  
insider or otherwise personally connected with the Debtor, and the proposed sale represents an  
arms-length transaction between the parties resulting from an earnest sale process, made  
without fraud, or collusion, and no attempt has been made by either party to take any unfair  
advantage of the other.

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36 **Proposed Notice of the Sale Hearing**

37 37. Local Rule 9014(a)(1) states that, "[a]ll motions which are required to be set for  
38 hearing, whether by statute, rule, or court order, shall be sset so that at least twenty-eight (28)



1 days' notice of the hearing of the motion is given." Under Local Rule 9014(a)(2), "[a] party  
2 may request a hearing on less than twenty-eight (28) days' notice in accord with LR 9006."

3  
4 38. The proposed timing of the Sale is expedited under Local Rule 9014(a)(1)-(2),  
5 however, the applicable Bankruptcy Rules support the proposed timeframe within which the  
6 Trustee seeks approval of the Sale.

7 39. Bankruptcy Rule 6004 provides that "[n]otice of a proposed use, sale, or lease of  
8 property, other than cash collateral, not in the ordinary course of business shall be given  
9 pursuant to Rule 2002(a)(2), (c)(1), (i), and (k), and, if applicable, in accordance with  
10 §363(b)(2) of the Bankruptcy Code. *See* Fed. R. Civ. P. 6004(a). Subsections (a)(2), (c)(1),  
11 (i), and (k) of Rule 2002, read together, require the movant to give all creditors and certain  
12 other parties "at least 21 days' notice by mail" of the sale of and the time and place of the  
13 auction. Under Fed. R. Bank. P. 2002(c), this notice must include the date, time, and place of  
14 the Auction and Sale Hearing, and the deadline for filing any objections to the relief requested  
15 in this Motion.  
16

17  
18 40. Substantially contemporaneously with filing of this Motion, the Trustee will file  
19 and serve the proposed Auction and Sale Hearing Notice by first-class mail, postage prepaid  
20 upon the following parties: (a) the office of the United States Trustee for the District of  
21 Nevada (the "U.S. Trustee"); (b) the Trustee's master service list maintained in these  
22 administratively consolidated cases, which includes all known creditors; (c) all known  
23 counterparties to the Debtor's executory contracts and unexpired leases that may be assumed  
24 and assigned in connection with the Sale; (d) applicable taxing authorities, including the  
25 Internal Revenue Service; (e) all parties known to the Trustee who have expressed an interest  
26 to the Debtor's Assets; and (f) all parties requesting notice in the above captioned  
27  
28

1 administratively consolidated chapter 11 cases. In addition, the Trustee will serve a reduced  
2 size copy of this Motion (double sided, four pages per side) on the forgoing persons and the  
3 Auction and Sale Hearing Notice will indicate that full-size copies of this Motion and any  
4 future sale documents, if applicable, can be obtained from the Trustee or the Trustee's counsel.  
5

6 41. The proposed Auction and Sale Hearing Notice served pursuant to the above  
7 paragraph will specifically note that the date and time of the Sale Hearing and any objection  
8 deadlines have not yet been approved by the Bankruptcy Court and thus are subject to change.  
9 Further, the proposed Auction and Sale Hearing Notice states that if the Court schedules the  
10 Sale Hearing for any date and time other than July 12, 2017 at 9:30 a.m. (Pacific Time), or sets  
11 any objection deadline contrary to what is stated above, parties receiving the Notice will be  
12 served an additional Notice providing the date(s) and time(s) as set by the Court.  
13

14 42. The proposed Auction and Sale Hearing Notice includes, among other things, the  
15 proposed date, time and place of the Auction and the Sale Hearing and the deadline for filing  
16 any objections to the Sale proposed herein, and, will otherwise comply with Fed. R. Bank. P.  
17 2002(c).  
18

19 43. The Trustee proposes that, in accord with Bankruptcy Rule 6004(b), the deadline  
20 for objecting to approval of the proposed Sale and relief sought herein be Wednesday, July 5,  
21 2017.  
22

23 44. The Trustee submits that the methods of notice described above constitute  
24 adequate notice of the proposed Sale of the Assets.  
25

#### **Proposed Assumption and Assignment Procedures**

26 45. The Trustee may also assume and assign certain executory contracts as part of the  
27 Sale, including any franchise related agreements to which the Debtor is a counterparty (the  
28

1 “Assumed Contracts and Assumed Franchise Agreements”). The Assumed Contracts and  
2 Assumed Franchise Agreements are listed on Schedule 2.1(d) of the Asset Purchase  
3 Agreement, which may be amended by the Purchaser at any time before the closing of the  
4 sale.  
5

6 46. No later than five (5) business days after the filing of this Motion, the Trustee will  
7 file and notice a schedule of the Assumed Contracts and Assumed Franchise Agreements  
8 (collectively the “Assumed and Assigned Agreements”) and related cure obligations (“Cure  
9 Schedule”) for all executory contracts and leases set forth on Schedule 2.1(d) of the Asset  
10 Purchase Agreement (the “Assumption and Assignment Notice”). The Assumption and  
11 Assignment Notice and included Cure Schedule will include a description of each Assumed  
12 Contract and Assumed Franchise Agreement potentially to be assumed and assigned to a  
13 potential buyer and the amount, if any, the Trustee believes is necessary to cure such  
14 agreements under Section 365 of the Bankruptcy Code (the “Cure Costs”). A copy of the  
15 Assumption and Assignment Notice, together with the Cure Schedule, will be served on each  
16 of the non-debtor counterparties listed therein by first class mail on the date that the  
17 Assumption and Assignment Notice is filed with the Court.  
18  
19

20 47. The Trustee proposes that any objections (“Assumption/Cure Objection”) to the  
21 Proposed Buyer’s assumption and assignment of the Assumed Contracts and Assigned  
22 Franchise Agreements, and/or the Cure Costs set forth on the Cure Schedule, must be in  
23 writing and filed with the Court on or before Monday, July 10, 2017, and (if not electronically  
24 filed) also be served so as to be received no later than July 10, 2017 by: (a) the Trustee, W.  
25 Donald Gieseke, Chapter 11 Bankruptcy Trustee for the estate of Submarina, Inc., 18124  
26 Wedge Pkwy., Suite 518, Reno, NV 89511; and (b) Trustee’s counsel, L. Edward Humphrey,  
27  
28

1 Esq., Humphrey Law PLLC, 201 West Liberty St., Suite 204, Reno, Nevada, 89501.

2 48. If no objections are received, then the Cure Costs set forth in the Assumption and  
3 Assignment Notice will be binding upon the nondebtor parties to the Assumed and Assigned  
4 Agreements for all purposes and will constitute a final determination of the total Cure Costs  
5 required to be paid by the Trustee in connection with the assumption and assignment of the  
6 Assumed and Assigned Agreements. In addition, all counterparties to the Assumed and  
7 Assigned Agreements will: (a) be forever barred from asserting any additional cure or other  
8 amounts with respect to the Assumed and Assigned Agreements, and the Trustee and the  
9 successful purchaser will be entitled to rely solely upon the Cure Costs set forth in the  
10 Assumption and Assignment Notice; and (b) be forever barred and estopped from asserting or  
11 claiming against the Debtor or the successful bidder that any additional amounts are due or  
12 other defaults exist, that conditions to assignment must be satisfied under such Assumed and  
13 Assigned Agreements or that there is any objection or defense to the assumption and  
14 assignment of such Assumed and Assigned Agreements. Under the Asset Purchase  
15 Agreement with the Proposed Buyer, the Proposed Buyer has retained the right to remove  
16 contracts from the list of Assumed and Assigned Agreements until the closing of the sale.

17 49. A nondebtor counterparty to an Assumed and Assigned Agreement shall have  
18 until two (2) days prior to the Sale Hearing to timely file and serve an objection asserting a  
19 cure amount higher than the proposed Cure Costs (the "Disputed Cure Amount"). To the  
20 extent the parties are unable to consensually resolve the dispute before the Auction and Sale  
21 Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such  
22 Disputed Cure Amount shall be determined at the Auction and Sale Hearing or at such other  
23 date and time as may be fixed by the Court. All other objections to the proposed assumption  
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25  
26  
27  
28

1 and assignment of an Assumed and Assigned Agreement will be heard at the Auction and Sale  
2 Hearing. In this, the Trustee proposes that the deadline for objecting to the assignment of the  
3 Assumed and Assigned Agreements to any Potential Bidder (other than the Proposed Buyer)  
4 on the basis of adequate assurance of future performance will be during the Auction and Sale  
5 Hearing.  
6

7 50. The Trustee requests that any party that does not timely object to the transactions  
8 proposed herein be deemed to consent to the treatment of its executory contract and/or  
9 unexpired lease under Section 365 of the Bankruptcy Code. *See Hargrave v. Twp. of*  
10 *Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to  
11 sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten (In re Gabeel)*, 61  
12 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). Moreover, the Trustee requests that any such  
13 party be deemed to consent to the assumption and assignment of its executory contract and/or  
14 unexpired lease notwithstanding any anti-alienation provision or other restriction on  
15 assignment. *See* 11 U.S.C. §§ 365(c)(1)(B), (e)(2)(A)(ii), and (f).  
16  
17

18 **INFORMATION REQUIRED BY LOCAL RULE 6004**

19 51. The following information is provided in compliance with Local Rule 6004:

- 20 a) A copy of the proposed Asset Purchase Agreement is attached as Exhibit 1.  
21  
22 b) A list of all claimants with a potential interest in the Purchased Assets is set  
23 forth in Paragraph 58 below.  
24  
25 c) A copy of the proposed form of Sale Order is attached as Exhibit 4.  
26  
27 d) At this time, there has been no request has been made for the appointment of a  
28 consumer privacy ombudsman. If such becomes necessary, the Trustee will  
supplement this Motion accordingly.

1 e) Material terms of the Asset Purchas Agreement are set forth above in Paragraph  
2 35 above.

3 f) In further compliance with Local Rule 6004, and Local Rule 6004(6) in  
4 particular, the Trustee states:  
5

6 a. Based on the Trustee's information and belief, the Sale is not to an  
7 insider.

8 b. Based on the Trustee's information and belief, the Proposed Purchaser  
9 has not entered into any agreements with the Debtor's key management  
or key employees regarding compensation or future employment.

10 c. The proposed Asset Purchase Agreement does not include an express  
11 release of any claims belonging to, or against, the estate. However, the  
12 proposed procedure for assumption and assignment of executory  
13 contacts is aimed at limiting future litigation involving the Debtor, its  
franchisees, and any successful purchaser.

14 d. An auction is contemplated.

15 e. Unless waived, the deadline to close the proposed sale is 30 days after  
16 the Sale Order becoming a Final Order. The closing is anticipated to be  
no later than August 31, 2017.

17 f. The Proposed Purchaser has not been required to make a good faith  
18 deposit. However, any proposed overbidders at the auction are required  
19 to make a \$25,000 refundable deposit.

20 g. No interim agreements with the Proposed Purchaser, related to  
21 management or otherwise, have been made.

22 h. The Trustee does not propose to release any sale proceeds on or after  
23 the closing, or make any definitive allocation of sale proceeds, except as  
24 may be necessary to satisfy any liens and encumbrances required to be  
paid under Section 363(f) of the Bankruptcy Code.

25 i. The sale proposed herein is not made in conjunction with a plan of  
26 reorganization confirmed under Section 1129 of the Bankruptcy Code  
27 and Trustee does not currently seek to have the sale declared exempt  
from taxes under 11 U.S.C. § 1146(a).

28 j. The Trustee will retain adequate access to the Debtor's books and  
records pursuant to the Asset Purchase Agreement.

- 1
- 2 k. Under Section 2.2(c) of the Asset Purchase Agreement, the Trustee is
- 3 retaining all Avoidance Actions under Chapter 5 of the Bankruptcy
- 4 Code, except those listed on Schedule 2.1(h) or are otherwise included
- 5 in Section 2.1(h) of the Asset Purchase Agreement as a Purchased
- 6 Asset. In short, the Seller retains all Avoidance Actions except those
- 7 against any SUBMARINA Franchisee of an Assumed Franchise
- 8 Agreement.
- 9
- 10 l. With respect to successor liability claims, Section 7.4 of the Asset
- 11 Purchase Agreement provides that the transfer of Purchased Assets shall
- 12 be free and clear of all liens, claims and encumbrances of third parties
- 13 pursuant to Section 363(f) of the Bankruptcy Code and “that the
- 14 Purchaser shall not be liable in any way (as successor entity or
- 15 otherwise) for any Claims that any of the foregoing or any other third
- 16 party may have against the Seller except as expressly provided herein.”
- 17
- 18 m. The sale does not propose to sell any property subject to a possessory
- 19 leasehold interest.
- 20
- 21 n. The proposed Bidding Procedures contemplate the allowance of credit
- 22 bidding of allowed secured claims only. As of this filing, the Trustee
- 23 submits any secured claims scheduled or filed in this case have either
- 24 been paid in full or are disputed.
- 25
- 26 o. This Motion requests relief from the 14 day stays imposed by Fed. R.
- 27 Bank. P. 6004(h) and 6006(d).
- 28

**Approval of the Sale Is Appropriate Under 11 U.S.C. § 363(b)**

19 52. Under Section 363(b) of the Bankruptcy Code, the Trustee “may use, sell, or

20 lease, other than in the ordinary course of business, property of the estate.” *See* 11 U.S.C. §

21 363(b). This provision generally allows for the sale of the property of the estate outside the

22 ordinary course of business, subject to court approval, where the proposed sale is a sound

23 exercise of business judgment and when the sale is proposed in good faith and for fair value.

24 *See In re Air Beds, Inc.*, 92 B.R. 419 (9th Cir. BAP 1998).

25

26 53. When a trustee demonstrates a valid business justification for a decision, a

27 presumption arises that the decision was made, “on an informed basis, in good faith and in the

28

1 honest belief that the action taken was in the best interests of the company.” *See Official*  
2 *Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147  
3 B.R. 650, 656 (S.D.N.Y. 1990) (finding the business judgment rule has "vitality by analogy"  
4 in a chapter 11 proceeding) (citations omitted).  
5

6 54. The Trustee, in its business judgment, believes that the terms of the Asset  
7 Purchase Agreement propose a fair and reasonable offer for the Estate to preserve the value of  
8 the Assets under the circumstances. The Proposed Buyer’s offer is at arms’ length and the  
9 Proposed Buyer will take the Assets on an “as-is” basis, without any contingencies or  
10 representation of condition.  
11

12 55. In addition, the Trustee has proposed the Sale in good faith and is providing direct  
13 notice of the sale to all known creditors of the Debtor’s estate and known counterparties to the  
14 Debtor’s executory contracts. Finally, because the Sale is subject to the proposed Bidding  
15 Procedures and the Auction, the price ultimately received should be deemed fair and  
16 reasonable.  
17

18 **Approval of the Sale Free and Clear of Liens, Claims and Encumbrances**

19 56. The Trustee requests approval to sell the Assets free and clear of any and all liens,  
20 claims, interests and encumbrances under Section 363(f) of the Bankruptcy Code. Pursuant to  
21 section 363(f), estate property can be sold “free and clear of any interest in such property of an  
22 entity other than the estate” if any one of the following conditions is satisfied:  
23

- 24 a. applicable nonbankruptcy law permits sale of such property free and clear of  
25 such interest;  
26 b. such entity consents;  
27  
28



- 1 c. such interest is a lien and the price at which such property is to be sold is
- 2 greater than the aggregate value of all liens on such property;
- 3 d. such interest is in bona fide dispute; or
- 4 e. such entity could be compelled, in a legal or equitable proceeding, to accept a
- 5 money satisfaction of such interest.
- 6

7 11 U.S.C. § 363(f)(1)-(5).

8 57. Section 363(f)(4) of the Bankruptcy Code authorizes the Trustee to sell property  
9 “free and clear of any interest in such property” if “such interest is in bona fide dispute.” See  
10 11 U.S.C. § 363(f)(4). A ‘bona fide dispute’ exists if the interest’s validity is subject to an  
11 objective factual or legal dispute. *See, e.g., Union Planters Bank, N.A. v. Burns (In re Gaylord*  
12 *Grain L.L.C.)*, 306 B.R. 624, 627-28 (8th Cir. BAP 2004) (citations omitted). “[A] court need  
13 not determine the probable outcome of the dispute, but merely whether one exists.” *Id.* at 627.  
14

15 58. Debtor’s Amended Schedule D, filed December 12, 2012 at ECF No. 26, lists the  
16 following Secured Claims, which relate to the below corresponding proofs of claim filed  
17 against Debtor’s estate (“POC”):  
18

- 19 a. Great America Leasing, is listed on Debtor’s Amended Schedule D as having a  
20 secured claim in an unknown amount related to a lease of computers/server.  
21 The Trustee is informed and believes the Debtor returned the collateral to Great  
22 American Leasing. Thus, any related secured claim of Great America Leasing  
23 related to this item has either been satisfied, or is disputed.  
24
- 25 b. Great America Leasing, with a secured claim of \$6,512.81 related to a lease of  
26 a phone system.  
27

1 i. Great America Leasing Corporation filed POC 1-1 on November 13,  
2 2012 in the secured amount of \$2,788.09. The Trustee is informed and  
3 believes the Debtor returned the corresponding collateral to Great  
4 American Leasing. Great American Leasing withdrew POC 1-1 on or  
5 about April 18, 2016. *See* ECF No. 436. Thus, any related secured  
6 claim of Great America Leasing related to this item has either been  
7 satisfied, or is disputed.  
8

9  
10 c. Subbros, Inc., a scheduled secured claim of \$250,614.74 related to “area  
11 developer rights purchased from Subbros.”

12 i. SD Subbros, Inc. (“SD Subbros”) filed POC 6-1 on February 27, 2013,  
13 asserting a secured claim in the amount of \$250,614.74. The Trustee is  
14 informed and that the Debtor paid SD Subbros \$299,514.88 post-  
15 petition (either through cash payments or setoffs). *See* ECF Nos. 233,  
16 235, 466. The Trustee further notes that it does not appear that the  
17 underlying obligation forming the basis of this claim is secured by a  
18 UCC-1 financing statement and the basis of the claimed security interest  
19 remains unclear to the Trustee. Thus, any asserted secured claim(s) of  
20 Subbros, Inc. and/or SD Subbros is either paid, or is disputed.  
21

22  
23 d. On March 4, 2013, Marie Zeller filed POC 19-1 (the “Zeller POC”), asserting a  
24 secured claim in the amount of \$431,151.67, for a “judgment based on money  
25 lent and unpaid wages.” While the Zeller POC attaches an Amended  
26 Judgment dated July 10, 2012, in the amount of \$413,456.55, it does not appear  
27 this judgment was ever recorded or properly perfected. Thus, it appears any  
28

1 claim related to the Zeller POC appears to be an unsecured claim. The secured  
2 status of the Zeller POC is disputed.

3 59. The Trustee submits that the Sale of the proposed Assets free and clear of liens,  
4 claims and encumbrances meets the requirements of section 363(f) of the Bankruptcy Code.  
5 The Trustee also believes that the service of the Auction and Sale Hearing Notice in  
6 accordance with the terms set forth in this Motion will afford creditors sufficient notice of the  
7 proposed Sale and provides additional justification for approval of the sale free and clear of all  
8 liens, claims and encumbrances.  
9  
10

11 **Approval of the Assumption and Assignment of Executory Contracts**  
12 **and Unexpired Leases**

13 60. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor  
14 in possession “subject to the court's approval, may assume or reject any executory contract or  
15 [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy  
16 court approval of a debtor's decision to assume or reject an executory contract or unexpired  
17 lease is whether the debtor's reasonable business judgment supports assumption or rejection.  
18 *See, e.g., In re Pomona Valley Med. Grp. Inc.*, 476 F.3d 665, 670 (9th Cir. 2007) *In re HQ*  
19 *Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003); *see also In re Market Square*  
20 *Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease “will  
21 be a matter of business judgment by the bankruptcy court”).  
22

23 61. Under Section 365(b)(1) of the Bankruptcy Code, if there has been a default in an  
24 executory contract, the Trustee “compensates, or provides adequate assurance that the trustee  
25 will promptly compensate, a party other than the debtor to such contract, for any actual  
26 pecuniary loss to such party resulting from such default” and “provides adequate assurance of  
27 future performance under such contract or lease.” 11 U.S.C. § 365(b)(1).  
28

1           62. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract,  
2 may assign its rights under the contract to a third party. 11 U.S.C. § 365(f). Further, Section  
3 363(k) of the Bankruptcy Code states that a debtor’s assignment of a contract or lease  
4 “relieves the trustee and the estate from any liability for any breach of such contract or lease  
5 occurring after such assignment.” 11 U.S.C. § 363(k). Accordingly, following assumption  
6 and assignment of the Assumed Contracts and Assumed Franchise Agreements defined in the  
7 Asset Purchase Agreement to the successful purchaser, the Debtor, its estate, and the Trustee  
8 will be relieved of any and all liability related to such contracts and leases. This supports the  
9 Trustee’s valid exercise of business judgment.  
10  
11

12           63. As set forth above, the Trustee has proposed notice procedures, in the form of the  
13 Assumption and Assignment Procedures. The Assumption and Assignment Notice makes  
14 clear to all counterparties exactly how each Assumed and Assigned Agreement will be cured.  
15 These procedures provide all counterparties to Assumed and Assigned Agreements adequate  
16 time and opportunity to object to both the proposed assumption and assignment of the  
17 executory contract or lease to the Proposed Purchaser or Successful Bidder, as well as the  
18 proposed Cure Costs. The Proposed Purchaser or Successful Bidder shall be obligated to pay  
19 or cause to be paid any and all cure amounts with respect to the Assumed and Assigned  
20 Agreements. In the event of a dispute as to any Cure Cost, the Successful Bidder shall only be  
21 obligated to pay the cure amount finally determined following resolution of the dispute.  
22  
23

24           64. The assumption and assignment of certain executory contracts and unexpired  
25 leases, particularly the Debtor’s franchise agreements, is an important component of the sale  
26 of the Assets. It is thus an appropriate exercise of business judgment for the Trustee to agree to  
27 assume and assign the Assumed and Assigned Agreements. Additionally, the Trustee submits  
28

1 that the notice provisions and objection deadline for counterparties to raise objections to the  
2 assumption and assignment of contracts and leases, as proposed in this Motion, are adequate to  
3 protect the rights of counterparties to the Debtor's executory contracts. Further, if necessary, a  
4 proposed purchaser can demonstrate adequate assurance of future performance at the Sale  
5 Hearing.  
6

7 **Relief Under Bankruptcy Rule 6004(h) and 6006(d) is Appropriate.**

8 65. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or  
9 lease of property ... is stayed until the expiration of 14 days after entry of the order, unless that  
10 court orders otherwise." Bankruptcy Rule 6006(d) similarly provides that "[a]n order  
11 authorizing the trustee to assign an executory contract or unexpired lease under § 363(f) is  
12 stayed until the expiration of 14 days after the entry of the order, unless the court orders  
13 otherwise." The Trustee requests that any order authorizing the transactions proposed herein  
14 be effective immediately by waiving the 14-day stay of Bankruptcy Rules 6004(h) and  
15 6006(d).  
16  
17

18 66. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient  
19 time for an objecting party to appeal before an order can be implemented. See Advisory  
20 Committee Notes to Bankruptcy Rules 6004(h) and 6006(d). Although the Bankruptcy Rules  
21 and Advisory Committee Notes are silent as to when a court should "order otherwise" and  
22 eliminate or reduce the 14-day stay, Collier suggests that the 14-day stay period should be  
23 eliminated to allow a sale or other transaction to close immediately, "where there has been no  
24 objection to the procedure." See 10 Collier on Bankruptcy, § 6004.10 (15th Ed. Rev.). Collier  
25 further suggests that if an objection is overruled, and the objecting party informs the court of  
26 its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek a  
27  
28

1 stay pending appeal, unless the court determines that the need to proceed sooner outweighs the  
2 interests of the objecting party.

3 67. The Trustee respectfully requests that, upon entry of the Sale Order, the Court  
4 waive the 14 day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of  
5 the 14 day stay imposed by these rules will allow any Sale to close as soon as possible and  
6 prevent further delay in the administration of these cases.  
7

8 **Consent to Jurisdiction**

9 68. Pursuant to Local Rule 7008 the Trustee consents to the entry of a final judgment  
10 or order with respect to this Motion if it is determined that the bankruptcy judge, absent  
11 consent of the parties, cannot enter final orders or judgment consistent with Article III of the  
12 United States Constitution.  
13

14 **No Prior Request**

15 69. No prior request for the relief sought herein has been made to this Court or any  
16 other Court.  
17

18 WHEREFORE, the Trustee respectfully requests that the Court (i) approve the Bidding  
19 Procedures, (ii) enter the Sale Order, in a form attached hereto as Exhibit 4, or such other  
20 order approving a sale to such other party that is the successful bidder at the Auction and (iii)  
21 grant such other and further relief that may be appropriate under the circumstances.  
22

23 DATED: June 17, 2017.

24 Respectfully submitted,

25 **HUMPHREY LAW PLLC**

26  
27 By: /s/ L. Edward Humphrey, Esq.  
28 L. Edward Humphrey, Esq.  
*Attorney for Chapter 11 Trustee*

**EXHIBIT "1"**

**EXHIBIT "1"**

**ASSET PURCHASE AGREEMENT**

**by and between**

**W. DONALD GIESEKE, CHAPTER 7 TRUSTEE  
FOR THE BANKRUPTCY ESTATE OF SUBMARINA, INC.,**

**as the Seller**

**and**

**SINELLI CONCEPTS INTERNATIONAL INC., or its assignee,**

**as the Purchaser**

**Dated as of June \_\_, 2017**

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**TABLE OF CONTENTS**

	<b><u>Page</u></b>
SECTION 1 DEFINITIONS.....	
1.1    Definitions.....	
1.2    Other Definitional and Interpretive Matters .....	
SECTION 2 PURCHASE AND SALE.....	
2.1    Purchased Assets.....	
2.2    Excluded Assets.....	
2.3    Liabilities .....	
2.6    Further Assurances.....	
SECTION 3 PURCHASE PRICE .....	
3.1    Purchase Price.....	
3.2    Closing Date Payment.....	
3.3    Allocation of Purchase Price.....	
3.4    Closing Date.....	
3.5    Deliveries of the Purchaser .....	
3.6    Deliveries of the Seller.....	
SECTION 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER .....	
4.1    Authority of the Seller .....	
4.2    Title to the Purchased Assets .....	
SECTION 5 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER .....	
5.1    Organization and Authority of the Purchaser .....	
5.2    Litigation.....	
5.3    No Finder .....	
5.4    Financing.....	
5.5    Ownership of Seller .....	
SECTION 6 ACTION PRIOR TO THE CLOSING DATE.....	
6.1    Notification of Breach; Disclosure .....	
6.2    Bankruptcy Court Approval.....	
6.3    Break-Up Fee .....	

SECTION 7 ADDITIONAL AGREEMENTS .....

- 7.1 Taxes .....
- 7.2 Collection of Receivables .....
- 7.3 Reasonable Access to Records and Certain Personnel .....
- 7.4 No Successor Liability .....

SECTION 8 CONDITIONS TO CLOSING.....

- 8.1 Conditions to Obligations of Each Party .....
- 8.2 Conditions to Obligations of the Purchaser .....
- 8.3 Conditions to Obligations of the Seller.....

SECTION 9 TERMINATION.....

- 9.1 Right of Termination.....
- 9.2 Termination Rights .....
- 9.3 Effect of Termination.....

SECTION 10 SURVIVAL .....

SECTION 11 GENERAL PROVISIONS .....

- 11.1 Confidential Nature of Information .....
- 11.2 Notices .....
- 11.3 Successors and Assigns.....
- 11.4 Entire Agreement; Amendments; .....
- 11.5 Waivers .....
- 11.6 Expenses .....
- 11.7 Partial Invalidity.....
- 11.8 Execution in Counterparts.....
- 11.9 Governing Law .....
- 11.10 No Third Party Beneficiaries .....

**SCHEDULES**

<b><u>Section</u></b>	<b><u>Schedule</u></b>
2.1(a)	Intellectual Property
2.1(b)	Telephone Numbers, URLs, Domain Names, Etc.
2.1(d)	Assumed Contracts and Assumed Franchise Agreements
2.1(h)	Claims and Judgments

**EXHIBIT LIST**

- EXHIBIT A - FORM OF BILL OF SALE
- EXHIBIT B - FORM OF TRADEMARK ASSIGNMENT
- EXHIBIT C - FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”) is made as of June \_\_\_, 2017 (the “Agreement Date”), by and between W. DONALD GIESEKE, CHAPTER 11 TRUSTEE OF THE ESTATE OF SUBMARINA, INC. (the “Seller”) and SINELLI CONCEPTS INTERNATIONAL INC., a Texas corporation, or its permitted assign or designee, if applicable (the “Purchaser”). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 1.1.

WHEREAS, Submarina, Inc. (“Debtor”) is a restaurant franchisor with a franchise system with franchisees that operate restaurants using the Debtor’s trademark, selling Debtor’s proprietary sub-sandwiches and related menu items and utilizing Debtor’s proprietary products and formulas (“Business”);

WHEREAS, on October 25, 2012 (the “Petition Date”), the Debtor filed a voluntary petition for relief (the “Filing”) commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada (the “Bankruptcy Court”). A Chapter 11 Trustee was appointed on February 8, 2017;

WHEREAS, W. Donald Gieseke is the duly-appointed Chapter 11 Trustee (“Trustee”) for the Debtor;

WHEREAS, the Seller desires to sell to the Purchaser the Purchased Assets (hereinafter defined) of Debtor, and the Purchaser desires to purchase from the Seller the Purchased Assets upon the terms and conditions hereinafter set forth;

WHEREAS, the Parties intend to effectuate the transactions contemplated by this Agreement pursuant to section 363 of the Bankruptcy Code; and

WHEREAS, the execution and delivery of this Agreement and the Seller’s ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of the Sale Order.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### **SECTION 1** **DEFINITIONS**

1.1 Definitions. In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms.

(a) “Accounts Receivable” means, with respect to the Debtor, all accounts receivable and other rights to payment of the Debtor and the full benefit of all security for such

accounts receivable or rights to payment, (i) listed on Schedule 2.1(h) and (ii) arising under the Assumed Contracts and Assumed Franchise Agreements, including royalties, revenues, and other payment rights arising before and after the Closing, but expressly excludes Miscellaneous Accounts Receivables of the Debtor.

(b) “Affiliate” means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of such Person.

(c) “Agreement” has the meaning specified in the preamble.

(d) “Agreement Date” has the meaning specified in the preamble.

(e) “Alternative Transaction” means any transaction (or series of transactions) involving the sale, transfer, lease or other disposition of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction, including pursuant to a stand-alone plan of reorganization or refinancing, all or some of the Purchased Assets (or agreement to do any of the foregoing) to a Person or Persons other than Purchaser or to effect any other transaction the consummation of which would be substantially inconsistent with this Agreement.

(f) “Ancillary Documents” means the Bill of Sale, Assignment of Trademarks, Assignment and Assumption Agreement, and each other agreement, document or instrument (other than this Agreement) executed and delivered by the Parties in connection with the consummation of the transactions contemplated by this Agreement.

(g) “Assignment and Assumption Agreement” means the Assignment and Assumption of Franchise Agreements in substantially the form attached hereto as Exhibit C.

(h) “Assignment of Trademarks” means the Assignment of Trademarks in substantially the form attached hereto as Exhibit B.

(i) “Assumed Contracts” means any Contract assumed and assigned to the Purchaser under this Agreement and pursuant to a Final Order of the Bankruptcy Court, including any Assumed Franchise Agreement;

(j) “Assumed Franchise Agreement” means any Franchise Agreement assumed and assigned to the Purchaser under this Agreement and pursuant to a Final Order of the Bankruptcy Court;

(k) “Assumed Liabilities” has the meaning specified in Section 2.3.

(l) “Avoidance Actions” means any and all causes of action that arise under chapter 5 of the Bankruptcy Code, including but not limited to §§ 502(d), 506(c), 510, 542, 543,

544, 545, 547, 548, 549, 550, 551 and 553, as well as any claim seeking to recharacterize debt or a claim to equity pursuant to Bankruptcy Code § 105(a), applicable state law, or otherwise.

(m) “Bankruptcy Case” means the case styled *In re Submarina, Inc.*, Case No. 12-22097-MKN and pending before the Bankruptcy Court.

(n) “Bankruptcy Code” means title 11 of the United States Code, sections 101 *et. seq.*

(o) “Bankruptcy Court” has the meaning specified in the recitals.

(p) “Bill of Sale” means the Bill of Sale in substantially the form attached hereto as Exhibit A.

(q) “Break-Up Fee” has the meaning specified in Section 6.3.

(r) “Business” has the meaning specified in the recitals.

(s) “Business Day” means any day of the year on which national banking institutions in Dallas, Texas are open to the public for conducting business and are not required or authorized to close.

(t) “Causes of Action” means any and all Claims, actions, refunds, causes of action, in suits, proceedings, rights of recovery, rights of setoff, rights of recoupment (or other similar rights) other than Avoidance Actions.

(u) “Claim” means a “claim” as defined in section 101(5) of the Bankruptcy Code and, except as otherwise provided in the context, means a claim against the Debtor or its bankruptcy estate.

(v) “Closing” has the meaning specified in Section 3.4.

(w) “Closing Date” has the meaning specified in Section 3.4.

(x) “Code” means the United States Internal Revenue Code of 1986, as amended.

(y) “Contract” means any agreement, contract, obligation, promise, instrument, undertaking or other arrangements (whether written or oral), and any amendment thereto, that is legally binding to which the Debtor is party.

(z) “Copyrights” means all United States and foreign copyrights and copyrightable subject matter, whether registered or unregistered, including all United States copyright registrations and applications for registration and foreign equivalents, all moral rights, all common-law copyright rights, and all rights to register and obtain renewals and extensions of copyright registrations, together with all other copyright rights accruing by reason of any international copyright convention.

(aa) “Cure Amounts” means all amounts, costs and expenses required by the Bankruptcy Court to cure all defaults under the Assigned Contracts so that they may be sold and assigned to Purchaser under Sections 363 and 365 of the Bankruptcy Code.

(bb) “Debtor” means Submarina, Inc., the debtor in the Bankruptcy Case.

(cc) “Documents” means the Debtor’s rights in and to all books, records, files, invoices, product specifications, advertising materials, cost and pricing information, supplier lists, and research and development files (including all data and other information stored on discs, tapes or other media) related to operation of the Business, whether or not constituting Trade Secrets.

(dd) “Domain Names” means any alphanumeric designation registered with or assigned by a domain name registrar, registry or domain name registration authority as part of any electronic address on the Internet.

(ee) “Encumbrance” means any interest, including any charge, lien, mortgage, lease, sublease, license or use and occupancy rights or agreement, hypothecation, deed of trust, pledge, security interest, option, right of use, first offer or first refusal, easement, servitude, restrictive covenant, encroachment, survey exception, reciprocal easement, or other similar restriction or encumbrance of any kind against the Purchased Assets, to the fullest extent contemplated under Section 363(f) of the Bankruptcy Code.

(ff) “Excluded Assets” has the meaning specified in Section 2.2.

(gg) “Excluded Liabilities” has the meaning specified in Section 2.3.

(hh) “Filing” has the meaning specified in the recitals.

(ii) “Final Order” means an action taken or Order issued by the applicable Governmental Authority as to which: (i) no request for stay of the action or Order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or Order, or protest of any kind, is pending before the Governmental Authority and the time for filing any such petition or protest is passed; (iii) the Governmental Authority does not have the action or Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

(jj) “Franchise Agreements” means the Submarina® Franchise Agreements and all addendums, amendments, and modifications entered into between the Debtor and the Person accepting and agreeing to operate a franchise Submarina® restaurant.

(kk) “Governmental Authority” means any federal, state, local or foreign governmental entity or any subdivision, agency, instrumentality, authority, department, commission, board, bureau, official or other regulatory, administrative or judicial authority thereof

or any federal, state, local or foreign court, tribunal or arbitrator or any self regulatory organization, agency or commission.

(ll) “Intellectual Property” means all intellectual property rights of any kind owned, used, held for use, or licensed (as licensor or licensee) by the Seller, including all Software, Copyrights, Patents, Trademarks, Trade Secrets, Domain Names, all rights to privacy and personal information, and all rights and remedies related thereto (including the right to sue for and recover damages, profits and any other remedy in connection therewith) for past, present or future infringement, misappropriation or other violation relating to any of the foregoing.

(mm) “IRS” means the United States Internal Revenue Service.

(nn) “Law” means any statute, law, ordinance, rule, regulation, code, enactment or other statutory or legislative provision.

(oo) “Legal Requirement” means any federal, state, provincial, local, municipal, foreign, international, multinational, or other administrative Order, constitution, Law, principle of common law, regulation, statute or treaty.

(pp) “Miscellaneous Accounts Receivables” means any miscellaneous accounts receivables of Debtor not listed on Schedule 2.1(h) and not arising under the Assumed Contracts, including the Assumed Franchise Agreements.

(qq) “Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

(rr) “Party” or “Parties” means, individually or collectively, the Purchaser and the Seller, and their permitted successors or assigns.

(ss) “Patents” means United States and foreign patents (including certificates of invention and other patent equivalents), patent applications, provisional applications and patents issuing therefrom, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, reissues, renewals, patent disclosures, technology, inventions (whether or not patentable or reduced to practice) or improvements thereto.

(tt) “Permitted Access Parties” has the meaning specified in Section 7.4.

(uu) “Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

(vv) “Petition Date” has the meaning specified in the recitals.

(ww) “Post-Close Filings” has the meaning specified in Section 7.4.

(xx) “Purchase Price” has the meaning specified in Section 3.1.

(yy) “Purchased Assets” has the meaning specified in Section 2.1.



(zz) “Purchaser” has the meaning specified in the preamble.

(aaa) “Sale Order” means an Order of the Bankruptcy Court, pursuant to, inter alia, sections 363 of the Bankruptcy Code (i) authorizing and approving, inter alia, the sale of the Purchased Assets to the Purchaser on the terms and conditions set forth herein free and clear of all Liabilities and Encumbrances.

(bbb) “Seller” has the meaning specified in the preamble.

(ccc) “Software” means all computer software programs (whether in source code, object code, or other form) and systems, databases and platforms owned, licensed or used by the Seller, including all databases, compilations, tool sets, compilers, higher level or “proprietary” languages, related documentation, technical manuals and materials, and any licenses to use or other rights relating to the foregoing.

(ddd) “SUBMARINA Franchisee” means the franchisee party to any Assumed Franchise Agreement. If the franchisee party is a business entity, the term includes the business entity’s owners. If the franchisee is an individual, the term includes business entities in which the individual has a financial interest.

(eee) “Trademarks” means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names (including all assumed or fictitious names under which the Business is conducted), and any other indicia of source of goods and services, designs and logotypes related to the above, in any and all forms, whether registered or unregistered, and registrations and pending applications to register the foregoing (including intent to use applications), and all goodwill related to or symbolized by the foregoing.

(fff) “Trade Secrets” means confidential or proprietary information and trade secrets (including, without limitation, recipes, supplier and pricing information, nutritional and caloric information and product labeling information) of the Business.

(ggg) “United States” and “U.S.” mean the United States of America.

1.2 Other Definitional and Interpretive Matters. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

(c) Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(d) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only, shall include the plural and vice versa.

(e) Headings. The provision of a Table of Contents, the division of this Agreement into Sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

(f) Herein. The words such as “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(g) Including. The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) No Strict Construction. The Parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

## **SECTION 2** **PURCHASE AND SALE**

2.1 Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to the Purchaser, and the Purchaser shall purchase, free and clear of all Encumbrances, all right, title and interest of the Debtor in, to or under the following properties and assets (herein collectively called the “Purchased Assets”):

(a) all registered and unregistered Intellectual Property including, but not limited to, the Debtor’s rights in any Trademarks and Copyrights the Purchaser has identified and listed on Schedule 2.1(a);

(b) all telephone numbers, URLs, Domain Names, social media accounts and handles used in connection with the operation of the Business including, but not limited to, the telephone numbers, Domain Names and social media accounts, including, but not limited to, the Debtor’s rights to the items listed on Schedule 2.1(b);

(c) all Trade Secrets;

(d) all Franchise Agreements listed on Schedule 2.1(d);

(e) all Accounts Receivables;

(f) all goodwill and other intangible assets, including the goodwill associated with the Intellectual Property;

(g) all Documents related to the Purchased Assets, except as provided in Section 2.2(g), provided that the Seller may retain a copy of any Documents in its discretion and shall only be required to reasonably assist the Purchaser in obtaining the delivery of any such Documents not in the Seller's possession;

(h) all Causes of Action, demands, and judgments listed on Schedule 2.1(h); all Causes of Action directly related to any pre-Closing breach of an Assumed Contract and/or Assumed Franchise Agreement; and all Avoidance Actions against a SUBMARINA Franchisee of an Assumed Franchise Agreement.

2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to the Purchaser, and the Seller shall retain all right, title and interest to, in and under the Excluded Assets. For all purposes of and under this Agreement, the term "Excluded Assets" shall mean:

(a) Trustee's bank and other depository accounts and lockboxes;

(b) all Contracts other than the Assumed Contracts ("Excluded Contracts");

(c) all Avoidance Actions, except those listed on Schedule 2.1(h) or otherwise included in Section 2.1(h), the Debtor or its estate may hold against any Person or Persons;

(d) all Causes of Action, demands, and judgments, belonging to the Debtor against any Person or Persons, except those listed on Schedule 2.1(h) or otherwise included in Section 2.1(h), the Debtor or its estate may hold against any Person or Persons;

(e) all Miscellaneous Accounts Receivables;

(f) any rights, claims or causes of action of the Seller under this Agreement or the Ancillary Documents;

(g) all Documents relating primarily to an Excluded Asset or an Excluded Liability; and

(h) all other or additional assets, properties, privileges, rights (including prepaid expenses) and interests of the Debtor related to the Business of every kind and description and wherever located, whether known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise.

2.3 Liabilities. Subject to the conditions of this Agreement, at Closing the Purchaser will assume the following obligations: (a) all obligations related to Cure Amounts and all obligations arising after the Closing Date related to the Purchased Assets and/or under the Assumed Contracts and Assumed Franchise Agreements; and (b) Purchaser shall hold harmless and indemnify the Seller from any Claims with respect to any SUBMARINA Franchisee related to an Assumed Franchise Agreement, whether arising before or after the Closing (collectively, the "Assumed

Liabilities”). Except for the Assumed Liabilities and subject to the conditions of this Agreement, Purchaser is not assuming any liabilities or obligations of Seller, and Seller will be liable for all liabilities and obligations (other than the Assumed Liabilities) arising from or in connection with ownership of the Purchased Assets or operation of the Business on or before the Closing Date, whether or not reflected in the Debtor’s books and records (“Excluded Liabilities”).

2.4 Further Assurances. The Parties agree that this Agreement may be revised, amended, and completed between the Agreement Date and the Sale Hearing, with notice of any such amendment provided to Persons entitled to notice in the Bankruptcy Case. The Parties further agree that the final form of the Schedules and Exhibits to this Agreement may be reasonably modified between the Agreement Date and Closing Date to conform with the intent of this Agreement, and that the final Schedules and Exhibits shall be agreed to by the Parties by means of a written amendment to this Agreement executed on or prior to the Closing Date. Neither party shall unreasonably refuse to execute or deliver any such amendment, and each of the Parties agrees to cooperate in the timely preparation of those Schedules and Exhibits. At the Closing, and at all times thereafter as may be necessary, the Seller and the Purchaser shall execute and deliver such other instruments of transfer as shall be reasonably necessary to vest in the Purchaser title to the Purchased Assets free and clear of all Encumbrances. The Seller and the Purchaser shall cooperate with one another to execute and make available such other documents and instruments as may be reasonably required to carry out the transactions contemplated hereby.

2.5 Assumption and Assignment of Assumed Contracts and Assumed Franchise Agreements. Schedule 2.1(d) contains a list (the “Assumed Contract List”) of all Contracts, including Franchise Agreements, to be assumed and assigned to the Purchaser pursuant to Section 2.1. Seller shall prepare a cure schedule that identifies, for each Contract or Franchise Agreement on the Assumed Contract List, the estimated and proposed Cure Amounts, if any, that must be paid for Seller to assume and assign to Purchaser each Agreement listed thereon pursuant to this Agreement (the “Cure Schedule”). No later than five (5) business days after the filing of the Sale Motion, Seller shall file with the Bankruptcy Court and serve a cure notice that includes the Cure Schedule on the counterparties to each Contract and Franchise Agreement listed on the Assumed Contract List. Any counterparty to a Contract or Franchise Agreement included on the Assumed Contract List shall have until two (2) days prior to the Sale Hearing to file with the Bankruptcy Court and serve on Purchaser and Seller an objection to the proposed cure amounts listed on the Cure Schedule and to the adequate assurance of future performance by Purchaser. All Contracts and Franchise Agreements to which Debtor is a party or by which the Debtor or any of its assets or properties are bound that are not listed on the Assumed Contract List shall be deemed to be “Excluded Contracts”). Purchaser shall be obligated to pay all Cure Amounts (including, for avoidance of doubt, amounts in excess of the estimated amounts). At any time prior to the Closing Date, (a) if a store relating to any Franchise Agreement closes or (b) if a Cure Notice reflects payment due or (c) if a counterparty to a Franchise Agreement objects to the filed Cure Notice and asserts a payment due, and if Purchaser is unable to resolve the claim or objection to Purchaser’s satisfaction, Purchaser may remove the associated Franchise Agreement from the Assumed Contract List by sending written notification to the Seller and within twenty-four hours of receipt of the notice, the Seller file such notice with the Bankruptcy Court and serve it on the non-debtor counterparties. Purchaser shall assume all obligations regarding the demonstration of adequate assurance of future performance required with respect to the Assumed Contracts under Section 365 of the Bankruptcy Code.

### **SECTION 3** **PURCHASE PRICE**

3.1 Purchase Price. Subject to the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of the Parties set forth herein, at the Closing, the purchase price to be paid by the Purchaser to the Seller in exchange for the Purchased Assets shall be \$500,000.00 ("Purchase Price").

3.2 Closing Date Payment. At the Closing, the Purchaser shall deliver the Purchaser Price to the Seller via wire transfer of immediately available funds to the account(s) designated by the Seller.

3.3 Allocation of Purchase Price. The Purchase Price shall be allocated among the assets in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, in relation to the assets' fair market value. The Parties agree the Purchase Price shall be allocated to Class VI Assets (Section 197 Intangibles) and Class VII Assets (Goodwill) as determined by the Purchaser.

The Parties agree that they will file any reports required to be filed (including without limitation IRS Form 8594) under such section 1060, consistent with such determined allocation and that they will not take a position for income tax purposes which is inconsistent with this Agreement unless so imposed by the Internal Revenue Service.

3.4 Closing Date. Upon the terms and conditions set forth in this Agreement the closing of the sale of the Purchased Assets contemplated hereby (the "Closing") shall take place as promptly as practicable, and at no time later than the thirty (30) calendar days, following the date on which the conditions set forth in Section 8 have been satisfied or waived (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such time and at the place as the Purchaser and the Seller may mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."

3.5 Deliveries of the Purchaser. At or prior to the Closing, the Purchaser shall deliver to the Seller:

(a) the Assignment and Assumption of Franchise Agreements, Bill of Sale, Assignment of Trademarks, and each other Ancillary Document to which the Purchaser is a party, duly executed by the Purchaser;

(b) the Purchase Price; and

(c) such other assignments and instruments of transfer, in form reasonably satisfactory to the Seller, as the Seller may reasonably request.

3.6 Deliveries of the Seller. At or prior to the Closing, the Seller shall deliver to the Purchaser:

- (a) the Bill of Sale, the Assignment and Assumption of Franchise Agreements, Assignment of Trademarks, and each other Ancillary Document to which the Seller is a party, duly executed and/or endorsed by the Seller;
- (b) a copy of the final Sale Order;
- (c) such other endorsements, assignments and instruments of conveyance and transfer in form and substance reasonably satisfactory to the Purchaser, as the Purchaser may reasonably request to vest in the Purchaser all the right, title and interest of the Seller in, to or under any or all the Purchased Assets; and
- (d) all passwords, keys and applications necessary to transfer telephone numbers, URL's and domain names in the Seller's possession.

#### **SECTION 4**

#### **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

As an inducement to the Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, the Seller represents and warrants to the Purchaser to the best of its knowledge and agrees as follows:

4.1 Authority of the Seller. Subject to the Sale Order, the Seller has full power and authority to execute, deliver, and perform its obligations under, and consummate the transactions contemplated by, this Agreement and each of the Ancillary Documents to which the Seller is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by the Seller, and consummation of the transactions contemplated hereby and thereby, have been duly authorized and approved by all required action on the part of the Seller, and, subject to the entry of the Sale Order, does not require any authorization or consent that has not been obtained. This Agreement has been duly authorized, executed and delivered by the Seller and, subject to the entry of the Sale Order, is the legal, valid and binding obligation of the Seller enforceable in accordance with its terms, and each of the Ancillary Documents to which the Seller is a party has been duly authorized by the Seller and upon execution and delivery by the Seller and subject to the entry of the Sale Order, will be a legal, valid and binding obligation of the Seller enforceable in accordance with its terms.

4.2 Title to Purchased Assets. The Seller has, and, upon delivery to the Purchaser on the Closing Date of the instruments of transfer contemplated by Section 3.6, and subject to the terms of the Sale Order, the Seller will thereby transfer to Purchaser, good and valid title to, all of the Purchased Assets, free and clear of all Encumbrances.

4.3 Limits on Purchaser's Recourse. Subject to the representations in Sections 4.1 and 4.2 of this Agreement:

(a) THE SALE OF THE PURCHASED ASSETS PROVIDED FOR IN THIS AGREEMENT IS EXPRESSLY MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, INCLUDING WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE

FOREGOING, THE COLLECTIBILITY OF ANY ACCOUNTS RECEIVABLE. THE PURCHASED ASSETS ARE BEING SOLD "AS IS" AND "WITH ALL FAULTS".

(b) PURCHASER ACKNOWLEDGES THAT IS A SOPHISTICATED INVESTOR, AND HAS KNOWLEDGE AND EXPERIENCE IN BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THE TRANSACTION(S) CONTEMPLATED UNDER THIS AGREEMENT. Purchaser has made, or has had the opportunity to make, such independent investigation as Purchaser deems warranted into the nature, title, validity, enforceability, collectability and value of the Purchased Assets, and all other facts and information it deems material to its purchase, and is entering into this Agreement solely on the basis of that investigation and Purchaser's own judgment, and is not acting in reliance on any representation and warranty furnished by Seller except as otherwise explicitly provided for herein.

## **SECTION 5**

### **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

As an inducement to the Seller to enter into this Agreement and to consummate the transactions contemplated hereby, the Purchaser hereby represents and warrants to the Seller and agrees as follows:

#### **5.1 Organization and Authority of the Purchaser.**

(a) The Purchaser is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Texas. The Purchaser has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and all of the Ancillary Documents to which it is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by the Purchaser have been duly authorized and approved by all required action on the part of the Purchaser, including by the Purchaser's board of directors (or similar governing body) and do not require any further authorization or consent of the Purchaser or its shareholders or members. This Agreement has been duly authorized, executed and delivered by the Purchaser and is the legal, valid and binding agreement of the Purchaser enforceable against the Purchaser in accordance with its terms, and each Ancillary Document to which the Purchaser is a party has been duly authorized by the Purchaser and upon execution and delivery by the Purchaser will be a legal, valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, except as (i) enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting creditors rights generally and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses.

(b) Neither the execution and delivery of this Agreement or any of such Ancillary Documents nor the consummation of any of the transactions contemplated hereby or thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, or an event of default under (1) the Purchaser's organizational

documents, (2) any Order to which the Purchaser is a party or by which it is bound or (3) any Legal Requirement affecting the Purchaser; or

(ii) require the approval, consent, authorization or act of, or the making by the Purchaser of any declaration, filing or registration with, any Person, other than filings with the Bankruptcy Court.

5.2 Litigation. There are no pending or, to the knowledge of the Purchaser, threatened Actions by any Person or Governmental Authority against or relating to the Purchaser or by the Purchaser or its assets or properties are or may be bound which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement and the Ancillary Documents to which it is a party, for the Purchaser to consummate on a timely basis the transactions contemplated hereby or thereby.

5.3 No Finder. Neither the Purchaser nor any Person acting on its behalf has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement for which the Seller is or will become liable, and the Purchaser shall hold harmless and indemnify the Seller from any claims with respect to any such fees or commissions.

5.4 Financing. The Purchaser will have, at the Closing Date, all funds necessary to consummate the transactions contemplated by this Agreement, including to promptly pay, when due, the Purchase Price. Upon reasonable request of the Seller, the Purchaser shall provide adequate proof of funds to complete the Closing by the Closing Date.

5.5 Ownership of Debtor. The Purchaser does not hold, directly or indirectly, any beneficial or other ownership interest in the Debtor, its Affiliates, or its securities.

## **SECTION 6**

### **ACTION PRIOR TO THE CLOSING DATE**

The Parties covenant and agree to take the following actions between the Agreement Date and the earlier of (x) the termination of this Agreement and (y) the Closing Date:

6.1 Notification of Breach; Disclosure. Each Party shall promptly notify the other of any event, condition or circumstance of which such Party becomes aware prior to the Closing Date that would cause, or would reasonably be expected to cause, a violation or breach of this Agreement (or a breach of any representation or warranty contained in this Agreement). During the period prior to the Closing Date, each Party will promptly advise the other in writing of any written notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement. It is acknowledged and understood that no notice given pursuant to this Section 6.2 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of the conditions contained herein.

6.2 Bankruptcy Court Approval. The Seller and the Purchaser acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval. The Trustee shall as soon as practical use his best efforts to obtain an order of the Bankruptcy Court



setting the sale hearing. In addition, the Trustee shall use his commercially reasonable efforts to obtain Bankruptcy Court approval, in the form of the Sale Order, of the transactions described herein. The Trustee shall make any filings, take all actions, and use commercially reasonable efforts to obtain any and all other approvals and orders necessary or appropriate for the consummation of the sale of the Purchased Assets, subject to his obligations to comply with any order of the Bankruptcy Court or provision of the Bankruptcy Code.

The Parties further acknowledge that this Agreement is subject to consideration by Seller and the Bankruptcy Court of higher or better competing bids with respect to an Alternative Transaction. Nothing contained herein shall be construed to prohibit Seller from soliciting, considering, negotiating, agreeing to, or otherwise taking action in furtherance of any such Alternative Transaction. Seller and Purchaser further acknowledge that, to obtain Bankruptcy Court approval of the transaction contemplated herein, Seller must demonstrate that it has taken reasonable steps to obtain the highest and otherwise best offer possible for the Purchased Assets, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, and, if appropriate under the circumstances, conducting an auction.

6.3 Break-Up Fee. Subject to approval of the Bankruptcy Court, in consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation hereof, and to compensate Purchaser for serving as a stalking-horse bidder, in accordance with and subject to the conditions of the Bankruptcy Court, Purchaser shall be entitled to a termination fee equal to the lesser of (i) Purchaser's expenses incurred in connection with this Agreement and the transaction contemplated herein, and (ii) \$15,000.00 (such amount, the "Break-Up Fee"). The Break-Up Fee shall be payable by Seller upon the conditions set forth in Section 9.3.

## **SECTION 7**

### **ADDITIONAL AGREEMENTS**

7.1 Taxes. Purchaser will pay any and all sales, transfer, documentary and other taxes payable in connection with the sales, conveyances, assignments, and transfers to be made to Purchaser hereunder and shall indemnify Seller and hold Seller harmless with respect to any and all such taxes.

7.2 Collection of Assumed Accounts Receivables. If, after the Closing Date, the Seller shall receive payment from any party with respect to any Accounts Receivable included in the Purchased Assets, the Seller shall promptly thereafter deliver such funds to the Purchaser.

7.3 Reasonable Access to Records and Certain Personnel. In order to facilitate the Seller's efforts to (i) administer and close the Bankruptcy Case, and (ii) prepare tax returns (together, the "Post-Close Filings"), for a period of one (1) year following the Closing, the Purchaser shall permit the Seller and the Seller's counsel and accountants (collectively, "Permitted Access Parties") during regular business hours, with reasonable notice, and subject to reasonable rules and regulations, reasonable access to the financial and other books and records which comprised part of the Purchased Assets that are required to complete the Post-Close Filings, which access shall include (x) the right of such Permitted Access Parties to copy, at such Permitted

Access Parties' expense, such required documents and records and (y) the Purchaser's copying and delivering to the relevant Permitted Access Parties such documents or records as they require, but only to the extent such Permitted Access Parties furnish the Purchaser with reasonably detailed written descriptions of the materials to be so copied and applicable Permitted Access Party reimburses the Purchaser for the costs and expenses thereof; provided, however, that the foregoing rights of access shall not be exercisable in such a manner as to unreasonably interfere with the normal operations of the Purchaser's business. Notwithstanding anything contained in this Section 7.7 to the contrary, in no event shall the Seller have access to any information that, based on advice of the Purchaser's counsel, could (1) reasonably be expected to create liability under applicable Law, or waive any legal privilege, (2) result in the discharge of any Trade Secrets of the Purchaser, its Affiliates or any third parties or (3) violate any obligation of the Purchaser with respect to confidentiality.

7.4 No Successor Liability. The transfer of the Purchased Assets shall be free and clear of any and all liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code, whether known or unknown, including, but not limited to, any of the Seller's creditors, vendors, suppliers, employees or lessors and that the Purchaser shall not be liable in any way (as successor entity or otherwise) for any Claims that any of the foregoing or any other third party may have against the Seller except as is expressly provided herein.

## **SECTION 8** **CONDITIONS TO CLOSING**

8.1 Conditions to Obligations of Each Party. The respective obligations of each Party to effect the sale and purchase of the Purchased Assets shall be subject to the fulfillment (or, if permitted by applicable Law, waiver) on or prior to the Closing Date, of the following conditions:

(a) The Sale Order shall have been entered and shall have become a Final Order, except that the Purchaser may waive this condition in its sole and absolute discretion without notice or consent to any parties in interest in the Bankruptcy Case or the Bankruptcy Court. The closing of the sale to Purchaser is contingent on entry of the Sale Order in a form acceptable to the Purchaser (a) authorizing the sale of the Assets free and clear of all liens, claims and encumbrances to Purchaser (with the exception of any liabilities specifically assumed by Purchaser), (b) authorizing all Assumed Contracts to be assumed by the Purchaser and assigned by the Seller, (c) determining that Purchaser is a good faith buyer under section 363(m) of the Bankruptcy Code and the provisions of 363(n) have not been violated; (d) determining that the offer made by Purchaser is the highest and best offer for the Assets; and (e) authorizing the Seller to execute any documents or perform any tasks required to effectuate and consummate the sale;

(b) no Governmental Authority shall have enacted, issued, promulgated or entered any Order that is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement that has not been withdrawn or terminated; and

(c) Assumed Contracts are in full force and effect.

8.2 Conditions to Obligations of the Purchaser.

(a) The obligation of the Purchaser to purchase the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions:

(i) the representations and warranties of the Seller contained herein shall be true and correct as of the Closing Date;

(ii) each covenant and obligation that the Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects;

(iii) the Seller shall be prepared to deliver, or cause to be delivered, to the Purchaser all of the items set forth in Section 3.6.

(b) Any condition specified in Section 8.2 may be waived by the Purchaser; provided that no such waiver shall be effective against the Purchaser unless it is set forth in a writing executed by the Purchaser.

### 8.3 Conditions to Obligations of the Seller.

(a) The obligation of the Seller to sell the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions:

(i) the representations and warranties of the Purchaser contained herein shall be true and correct in all material respects as of the Closing Date and the Seller shall have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof;

(ii) each covenant and obligation that the Purchaser is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and the Seller shall have received a certificate of the Purchaser to such effect signed by a duly authorized officer thereof; and

(iii) each of the deliveries required to be made to the Seller pursuant to Section 3.6 shall have been so delivered.

(b) Any condition specified in Section 8.3 may be waived by the Seller; provided that no such waiver shall be effective against the Seller unless it is set forth in writing executed by the Seller.

## **SECTION 9** **TERMINATION**

9.1 Right of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated only as provided in this Section 9. In the case of any such termination that is not automatic pursuant to Section 9.2(b) below, the terminating Party shall give proper written notice to the other Party specifying the provision pursuant to which the Agreement is being terminated.

9.2 Termination Rights. This Agreement may be terminated at any time before Closing:

(a) by mutual written consent of Seller and Purchaser;

(b) automatically and without any action or notice by Seller to Purchaser, or Purchaser to Seller, immediately upon the occurrence of any of the following events:

(i) the issuance of a final and non-appealable order by a Governmental Authority to restrain, enjoin, or otherwise prohibit the transfer of the Purchased Assets contemplated hereby; or

(ii) the Bankruptcy Court's approval of, a proposal for an Alternative Transaction;

(c) by Purchaser:

(i) if Purchaser is not in material breach of this Agreement and there has been a violation or breach by Seller of any representation, warranty, or covenant contained in this Agreement that (A) has not been waived by Purchaser, and (B) Seller has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Purchaser;

(ii) if on or before July 15, 2017, the Bankruptcy Court shall not have held a hearing to consider approval of the Sale;

(iii) if on or before July 31, 2017, the Bankruptcy Court shall not have entered the Sale Order (in this, the Parties recognize the Seller has no control over the Bankruptcy Court's calendar, but upon the Bankruptcy Court orally approving this Agreement the Seller shall promptly circulate and upload a proposed Sale Order in accord with the Local Rules of the Bankruptcy Court);

(iv) Seller's acceptance of, or the Bankruptcy Court's approval of, a proposal for an Alternative Transaction; or

(v) The Sale Order is appealed prior to the Closing.

(vi) If Purchaser removes any Franchise Agreement from the Assumed Contract List on account of an inability to resolve a franchisee's claim or objection pursuant Section 2.5, and if such removal materially affects the value or integrity of the franchise system as a whole. For avoidance of doubt, removal of any Franchise Agreement with a remaining term of more than 6 months will be considered "material" for purposes of this provision.

(d) by Seller:

(i) if Seller is not in material breach of this Agreement and there has been a violation or breach by Purchaser of any representation, warranty, or covenant

contained in this Agreement that (A) has not been waived by Seller, and (B) Purchaser has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Seller;

(ii) the conditions precedent to Closing set forth in Section 8.2 have not been satisfied or waived in writing by Purchaser,

(iii) Purchaser breaches its obligations to consummate the transactions contemplated by this Agreement on or before the Closing Date;

(iv) the Bankruptcy Court's approval of an Alternative Transaction; or

(v) The Sale Order is appealed prior to the Closing.

Each condition set forth in this Section 9.2 pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in Section 9.2 are applicable, the applicable Party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated.

9.3 Effect of Termination. If this Agreement is validly terminated pursuant to Section 9.2, this Agreement shall become null and void and have no effect (other than this Section 9.3, Sections 11.1, 11.9, and any other sections that by their nature survive termination) and neither Seller nor Purchaser shall have any liability or obligation arising under or in connection with this Agreement. If this Agreement is terminated (A) pursuant to Section 9.2(b)(ii) or (B) by Purchaser pursuant to Section 9.2(c)(iv) or (C) by Seller pursuant to Section 9.2(d)(iv), then Purchaser shall be entitled to, and Seller shall pay to Purchaser, the Break-Up Fee within seven (7) calendar days of the Closing of an Alternative Transaction. In all other events, the Purchaser's right to a Break-Up Fee shall be exclusively determined by the Bankruptcy Court.

## **SECTION 10** **SURVIVAL**

The representations and warranties of the Purchaser and the Seller made in this Agreement and the covenants of the Purchaser and the Seller contained in this Agreement that, by their terms, are to be performed prior to the Closing shall not survive the Closing Date and shall be extinguished by the Closing and the consummation of the transaction contemplated by this Agreement. Absent fraud, the Purchaser shall not have any remedy against the Seller, and the Seller shall not have any remedy against the Purchaser or its Affiliates for (i) any breach of a representation or warranty contained in this Agreement and (ii) if the Closing occurs, any breach of a covenant contained in this Agreement with respect to the period prior to the Closing Date, except to the extent that certain obligations of the Parties that survive the Closing.

## **SECTION 11** **GENERAL PROVISIONS**

11.1 Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be given or delivered by personal delivery, by facsimile, by electronic mail or by a nationally recognized private overnight courier service addressed as follows:

If to the Purchaser, to:

Sinelli Concepts International  
4621 Watauga Road  
Dallas, Texas 75202  
Attn: Jeff Sinelli  
Facsimile: \_\_\_\_\_  
E-mail: jeffreysinelli@yahoo.com

with a copy to (which alone shall not constitute notice):

Singer & Levick, P.C.  
16200 Addison Road  
Suite 140  
Addison, Texas 75001  
Attn: Michelle Shriro  
Facsimile: (972) 380-5748  
Email: [mshriro@singerlevick.com](mailto:mshriro@singerlevick.com)

If to the Seller, to:

W. Donald Gieseke  
Chapter 11 Trustee for the Estate of Submarina, Inc.  
18124 Wedge Pkwy, Suite 518  
Reno, NV 89511  
Facsimile: 775-562-8181  
E-mail: wdg@renotruster.com

with a copy to (which alone shall not constitute notice):

L. Edward Humphrey  
50 W Liberty St.  
Reno, NV 89501  
Facsimile: 855-485-6329  
E-mail: ed@hlawnv.com

or to such other address or facsimile number as such party may indicate by a notice delivered to the other party hereto.

Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the date following the date upon which it is delivered for overnight delivery to such courier service, if delivered personally (with written confirmation of receipt), on the date of such delivery or, if sent via facsimile or electronic mail, on the date of the transmission of the facsimile or electronic mail, provided that the sender thereof receives written confirmation that the facsimile or electronic mail, as the case may be, was successfully delivered to the intended recipient.

11.2 Successors and Assigns. The Purchaser may, subject to approval of the Bankruptcy Court and Section 5.5 of this Agreement, assign any or all of its rights hereunder to any of its Affiliates or any of its direct or indirect subsidiaries and the Purchaser shall advise the Seller of any such assignment and shall designate such party as the assignee and transferee of the Purchased Assets. Any such assignee shall assume all of the Purchaser's duties, obligations and undertakings hereunder; provided, however, that any such assignment shall not release or relieve the Purchaser of any of its obligations or liabilities under this Agreement. The Seller may not assign, transfer or otherwise dispose of its respective rights hereunder without the prior written consent of Purchaser, which consent may not unreasonably withheld, conditioned or delayed.

11.3 Entire Agreement; Amendments. This Agreement and the Ancillary Documents referred to herein contain the entire understanding of the Parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the Parties hereto with respect to such subject matter. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties.

11.4 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party. Except as otherwise provided herein, the failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

11.5 Expenses. Each Party will pay all costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

11.6 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

11.7 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed

by and delivered to each of the Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic delivery (i.e., by electronic mail of a PDF signature page) shall be effective as delivery of a manually executed counterpart of this Agreement.

11.8 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas applicable to contracts executed in and to be performed in that State.

(a) All actions arising out of or relating to this Agreement, including the resolution of any and all disputes hereunder, shall be to the fullest extent possible heard and determined in the Bankruptcy Court, and the Parties hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court in any such action and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action. The Parties hereby consent to service of process by mail (in accordance with the Bankruptcy Code and Bankruptcy Rules) or any other manner permitted by law.

(b) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF THE SELLER, THE PURCHASER, OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

11.9 No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

11.10 Further Assurances. Each of the Parties shall execute such documents and other papers and take such further action as may be reasonably required to carry out the provisions hereof and the transactions contemplated hereby.

**[SIGNATURE PAGES FOLLOW]**



**IN WITNESS WHEREOF**, the parties hereto have caused this Asset Purchase Agreement to be executed the day and year first above written.

**PURCHASER:**

**SINELLI CONCEPTS INTERNATIONAL,**  
a Texas corporation

By: \_\_\_\_\_  
Name:  
Title:

**SELLER:**

\_\_\_\_\_  
**W. DONALD GIESEKE, CHAPTER 11  
TRUSTEE FOR THE BANKRUPTCY  
ESTATE OF SUBMARINA, INC.  
CASE NO. 12-22097-MKN (Bankr. D. Nev.)**

**DISCLOSURE SCHEDULES TO ASSET PURCHASE AGREEMENT,  
DATED AS OF MAY \_\_, 2017,  
BY AND AMONG  
W. DONALD GIESEKE, CHAPTER 7 TRUSTEE  
OF THE BANKRUPTCY ESTATE OF SUBMARINA INC.  
AND  
SINELLI CONCEPTS INTERNATIONAL**

**SCHEDULE 2.1(a) – INTELLECTUAL PROPERTY**

**1. Trademarks**

Trademark Registrations

Mark	Registration/ Serial Number	Date of Registration	Class
SUBMARINA	2631360	October 8, 2002	029, 030, 042
SUBMARINA A BETTER BUILT SUB (stylized letters)	4958866	May 17, 2016	IC 043
SUBMARINA CALIFORNIA SUBS (stylized letters)	3147532	September 26, 2006	IC 029, 030, 043
SUBMARINA CALIFORNIA SUBS (word mark)	3630150	June 2, 2009	IC 029, 030, 043
SUBMARINA (word mark)	2631360	October 8, 2002	IC 029, 030, 042
THE BEST SUBS UNDER THE SUN	5052737	October 4, 2016	IC 043
POWERED UP	5006169	July 26, 2016	IC 043
AWESOME INGREDIENTS INSIDE!	4991708	July 5, 2016	IC 043
CALI-STYLE	4991707	July 6, 2016	IC 043
AVOCADO HEAVEN	4959518	May 17, 2016	IC 043
DELICIOUSLY FRESH, DELIGHTFULLY HEALTHY!	4913419	March 8, 2016	IC 043
PREMI-YUMM	4437414	November 19, 2013	IC 043
A BETTER BUILT SUB	3905701	January 11, 2011	IC 029, 030, 043

Pending Trademark Applications

Mark	Serial Number	Application Date	Class
SUBMARINA DELI (word mark) <sup>1</sup>	86943876	March 17, 2016 (1B)	

Note 1. May 13, 2017, office action finding that the mark “Submarina” is inherently distinctive, and that the 2(f) designation may be withdrawn.

**2. Copyrights**

All copyrights used in connection with the operation of the SUBMARINA business, including the following:

- Confidential operations manual
- Design portion of the trademarks
- Website and social media content/Wikipedia content
- Copyrighted elements of SUBMARINA restaurant trade dress and menu boards
- Advertising and marketing materials.

*[End of Schedule 2.1(a)]*

**SCHEDULE 2.1(b) – TELEPHONE NUMBERS, URLs, DOMAIN NAMES, ETC.**

**1.** All telephone numbers used in connection with the franchising of SUBMARINA stores including the following telephone numbers:

713-963-8125  
1-866-TELL US (1-866-783-5587)  
760-471-3377  
646-607-2202 (fax).

**2.** All URLs, domain names, social media accounts and handles used in connection with the operation of the SUBMARINA business including the following:

[www.submarina.com](http://www.submarina.com)  
<https://www.facebook.com/Submarina-137276632562/>

*[End of Schedule 2.1(b)]*

**SCHEDULE 2.1(d) – ASSUMED CONTRACTS AND ASSUMED FRANCHISE AGREEMENTS****I. Assumed Franchise Agreements:**

<u>Location</u>	<u>Franchise Number</u>
California:	
Escondido	#CA0002
Laguna Niguel	#CA0109
La Mesa	#CA0018
Santee	#CA0012
Menifee	#CA0060
Lake Elsinore	#CA0053
Cypress	#CA0102
Murrieta Cal Oaks	#CA0048
Murrieta Hot Springs	#CA0064
Murrieta Sky Canyon	#CA0068
Rancho San Diego	#CA0035
Oceanside West	#CA 0024
Genesee	#CA0063
Mira Mesa	#CA0007
Santa Clarita	#CA0098
Temecula Redhawk	#CA0054
Vista-Sycamore Ave.	#CA0061
Vista South	#CA0040
Wildomar	#CA0078
Anaheim Hilton	#CA0155
Murrieta Antelope	#CA0168
Lancaster	#CA0120
Guam –	#GU0153
	#GU0163
	#GU0173
	#GU0175

**II. Assumed Contracts:**

None other than the Assumed Franchise Agreements.

*End of Schedule 2.1(d)*

### **SCHEDULE 2.1(h) – CLAIMS AND JUDGMENTS**

Submarina's rights in all Causes of Action, payment rights, and judgments against the counterparty to an Assumed Franchise Agreement that is directly related to any pre-Closing breach of the SUMBARINA Franchisee's Assumed Franchise Agreement, including, without limitation, the following:

1. Submarina's rights in the following judgments and amounts entered by order of the Bankruptcy Court dated April 15, 2016, and all interest accrued thereon:
  - a. Jeffrey Warfield -- \$35,217.75
  - b. Eric Dannenberg -- \$95,599.97
  - c. Joe Mason -- \$36,503.24
  - d. Scott Freedland -- \$46,752.62
  - e. Paul Simmons -- \$38,514.64
  - f. Eduardo Alcantar -- \$41,482.33
  - g. Vonnie Audibert -- \$35,293.59
2. Submarina's rights in all Causes of Action, demands, and payment rights that have been alleged (or that could have been alleged) in the following actions:
  - a. The Adversary Proceeding initiated on August 10, 2016, styled *In Re: Submarina, Inc. v. Paul Simmons, et al*, in the United States Bankruptcy Court, District of Nevada, filed at Adv. Case No. 16-01095-MKN
  - b. Submarina, Inc. v. SD Subbros, Inc., AAA Arbitration, Case No. 01-15-0004-1267
  - c. Submarina v. Subbros, Inc., AAA Arbitration, Case No. 01-15-0004-1266.

For avoidance of doubt, if the party adverse to Submarina listed above is not ultimately the counterparty or does not have a beneficial interest in the counterparty to an Assumed Franchise Agreement, the Submarina bankruptcy estate shall retain all rights in the above. For example, Eric Dannenberg holds an interest in EDRC, LLC. Judgments and claims against Eric Dannenberg are included in the sale if EDRC, LLC is a counterparty to an Assumed Franchise Agreement.

*[End of Schedule 2.1(h)]*

**SCHEDULE 2.2(c) – EXCLUDED CONTRACTS**

All executory contracts, leases, franchise agreements, or other agreements other than those listed in Schedule 2.1(d)

*[End of Schedule 2.2(c)]*

**EXHIBIT A**

**FORM OF BILL OF SALE**



**BILL OF SALE**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, W. Donald Gieseke, Chapter 11 Trustee for the Bankruptcy Estate of Submarina, Inc., ("Seller") hereby sells, conveys, assigns, and transfers to Sinelli Concepts International Inc., a Texas corporation ("Buyer") all of Seller's rights, title, and interest in and to all of the Purchased Assets defined and identified in that certain Asset Purchase Agreement between the parties.

The Purchase Assets are being conveyed pursuant to the Sale Order of the Bankruptcy Court and, subject to the Sale Order, are being conveyed free and clear of all liens and encumbrances.

THE SALE OF THE PURCHASED ASSETS IS EXPRESSLY MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, INCLUDING WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, THE COLLECTIBILITY OF ANY ACCOUNTS RECEIVABLE. THE PURCHASED ASSETS ARE BEING SOLD "AS IS" AND "WITH ALL FAULTS".

PURCHASER ACKNOWLEDGES THAT IS A SOPHISTICATED INVESTOR, AND HAS KNOWLEDGE AND EXPERIENCE IN BUSINESS MATTERS THAT ENABLE IT TO EVALUATE THE MERITS AND RISKS OF THIS SALE.

IN WITNESS WHEREOF, this Bill of Sale is executed on this \_\_\_ day of \_\_\_\_\_, 2017.

**SELLER:**

W. Donald Gieseke, Chapter 7 Trustee  
for the Bankruptcy Estate of Submarina, Inc.

**BUYER:**

Sinelli Concepts International Inc.  
a Texas corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B**

**FORM OF ASSIGNMENT OF TRADEMARKS**

**ASSIGNMENT OF TRADEMARKS**

This Assignment of Trademarks (“Assignment”) is entered into on this \_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”), by and between W. Donald Gieseke, Chapter 11 Trustee for the Bankruptcy Estate of Submarina, Inc., with an address of 18124 Wedge Parkway, Suite 518, Reno, Nevada 89511 (“Assignor”) and Sinelli Concepts International Inc., a Texas corporation with a principal place of business at 4621 Watauga Road, Dallas, Texas 75202 (“Assignee”).

WHEREAS, Assignor is the Chapter 11 Bankruptcy Trustee for debtor Submarina, Inc. (“Submarina”);

WHEREAS, Submarina is the registered owner of the trademark “SUBMARINA”,



, and other related logos, service marks, slogans, and indicia of origin used in connection with the development, operation, and franchising of restaurants featuring deli sandwiches and beverages (the “Trademarks”);

WHEREAS Submarina has registered or applied for registration of the trademarks identified on Schedule A on the Principal Register of the U.S. Patent and Trademark Office (the “Registrations”);

WHEREAS, Assignor warrants and represents that he has not assigned any rights in or to the Trademarks or Registrations to any third party while acting in the capacity as Chapter 11 Trustee of Submarina’s bankruptcy estate; and

WHEREAS, Assignor desires to assign to Assignee, and Assignee desires to accept, assignment of all of Submarina’s rights in the Trademarks and Registrations, together with the goodwill of the business symbolized by the Trademarks, and all copyrights in and to the logo designs of the Trademarks.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby assign unto Assignee, and Assignee hereby accepts all of Submarina’s right, title, and interest in and to the Trademarks, together with the goodwill of the business symbolized by the Trademarks, and all rights in and to the Registrations. In the event there is any inconsistency between this Assignment and the Asset Purchase Agreement that forms the basis of this Assignment, the Asset Purchase Agreement controls.

WHEREAS, the parties, intending to be legally bound, have executed this Assignment to be effective as of the Effective Date set forth above.

**ASSIGNOR:**

W. Donald Gieseke, Chapter 11 Trustee  
for the Bankruptcy Estate of Submarina, Inc.

**ASSIGNEE:**

Sinelli Concepts International Inc.  
a Texas corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_


Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Schedule A**  
**Registrations**

Mark	Registration/ Application Number	Registration Date	International Class
SUBMARINA	2631360	October 8, 2002	029, 030, 042
SUBMARINA A BETTER BUILT SUB (stylized letters)	4958866	May 17, 2016	IC 043
SUBMARINA CALIFORNIA SUBS (stylized letters)	3147532	September 26, 2006	IC 029, 030, 043
SUBMARINA CALIFORNIA SUBS (word mark)	3630150	June 2, 2009	IC 029, 030, 043
SUBMARINA (word mark)	2631360	October 8, 2002	IC 029, 030, 042
THE BEST SUBS UNDER THE SUN	5052737	October 4, 2016	IC 043
POWERED UP	5006169	July 26, 2016	IC 043
AWESOME INGREDIENTS INSIDE!	4991708	July 5, 2016	IC 043
CALI-STYLE	4991707	July 6, 2016	IC 043
AVOCADO HEAVEN	4959518	May 17, 2016	IC 043
DELICIOUSLY FRESH, DELIGHTFULLY HEALTHY!	4913419	March 8, 2016	IC 043
PREMI-YUMM	4437414	November 19, 2013	IC 043
	78462981	September 26, 2006	IC 029, 030, 043
	86748534	September 4, 2015	IC 043
A BETTER BUILT SUB	3905701	January 11, 2011	IC 029, 030, 043
SUBMARINA DELI (word mark)	86943876	Pending	IC 043

**EXHIBIT C**

**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (“Assignment”) is entered into on this \_\_\_ day of \_\_\_\_, 2017 (“Effective Date”), by and between W. Donald Gieseke, Chapter 11 Trustee for the Bankruptcy Estate of Submarina, Inc., with an address of 18124 Wedge Parkway, Suite 518, Reno, Nevada 89511 (“Assignor”) and Sinelli Concepts International Inc., a Texas corporation with a principal place of business at 4621 Watauga Road, Dallas, Texas 75202 (“Assignee”).

**WHEREAS**, Submarina, Inc. (“Submarina”) franchises the operation of restaurants identified by the trade name and service mark “SUBMARINA” and other trademarks, service marks, designs, trade dress, and other indicia of origin (the “Business”).

**WHEREAS**, Assignor desires to transfer and assign to Assignee certain rights and benefits, and to delegate to Assignee certain obligations, and Assignee desires to accept such benefits and assume such obligations, as set forth herein;

**NOW, THEREFORE**, in consideration of mutual promises contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

(1) Assignor hereby assigns, conveys, and transfers to Assignee all of Submarina’s rights in and to, and all of the benefits of, the franchise agreements listed on Exhibit A to this Agreement (collectively, the “Franchise Agreements”) (including claims for payment of past due royalty fees, marketing fund contributions, and other amounts due or payable to Assignor as of the Effective Date). Assignor hereby delegates to Assignee, and Assignee hereby assumes, Submarina’s obligations under the Franchise Agreements accruing on or after the date hereof. For avoidance of doubt, Assignee (a) assumes no obligations or liabilities under the Franchise Agreements accruing prior to the Effective Date, (b) accepts no benefits and assumes no obligations under any master franchise agreement (i.e., an agreement that grants subfranchising rights), and (c) accepts no benefits and assumes no obligations under any development agent agreement (i.e., an agreement that promises commission or other payments based on the agent’s agreement to provide franchise sales services or operational support to SUBMARINA franchisees).

(2) Assignor hereby assigns, conveys, and transfers to Assignee, and Assignee accepts, all of Submarina’s right, title, and interest in and to all “Causes of Action” (as that term is defined in that certain Asset Purchase Agreement between the parties) directly related to any pre-Effective Date breach to the franchise agreements described in subsection (1), above.

(3) Assignor hereby assigns, conveys, and transfers to Assignee, and Assignee accepts, all of Submarina’s right, title, and interest in and to all claims and judgments for unpaid royalty fees, marketing fund contributions, and other amounts owed by any present or former franchisee of the SUBMARINA franchise system including, without limitation, the claims and judgments listed on Exhibit B.

(4) Assignor hereby assigns, conveys, and transfers to Assignee, and Assignee accepts, all of Submarina’s right, title, and interest in and to all telephone numbers, URLs, domain names, social media accounts, and handles used in connection with the operation of the Business including, without limitation, the telephone numbers and facsimile numbers listed on Exhibit C. Assignor also grants to Assignee power of attorney to terminate and/or modify all telephone and online directory listing agreements; however, Assignee assumes no obligations or liability under any such agreements.

(5) Assignor hereby assigns, conveys, and transfers to Assignee, and Assignee accepts, all of Submarina’s right, title, and interest in and to all copyrights used or held for use by Submarina in connection with the operation of the Business, along with all income, royalties, damages and payments due or payable to Assignor as of the Effective Date or thereafter (including damages and payments of past, present or future infringements or misappropriations thereof or other conflicts therewith, the right to sue and recover for past, present or future infringements or misappropriations thereof or other conflicts therewith) and any and all corresponding rights that, now or hereafter, may be secured throughout the world, including all copies and

tangible embodiments of any such copyrights in Assignor’s possession or control. As used in this Assignment, “copyrights” means and includes all of the following in any jurisdiction throughout the world used in the Business: copyrights, mask works and copyrightable works and all applications, registrations and renewals in connection therewith.

(6) Assignor hereby assigns, conveys and transfers to Assignee, and Assignee accepts, all of Submarina’s right, title, and interest in and to all proprietary information and know-how owned and used, or held for use, by Submarina in connection with the Business including, without limitation, all technologies, methods, formulations, menus, recipes, databases, trade secrets, know-how, advertising and marketing programs and plans, training materials, operational manuals, franchise disclosure documents, and point-of-purchase materials.

(7) Assignor hereby assigns, conveys, and transfers to Assignee, and Assignee accepts, all Documents that are used in, held for use in or intended to be used in connection with the Business, including Documents relating to marketing, advertising, franchising, and all files containing historical information about franchisees and suppliers. For the purposes of this Agreement, “Documents” mean all documents, in electronic and hard format, including operations manuals, technical manuals, franchise training-related materials, supplier materials, marketing documentation (including sales brochures, flyers, pamphlets, web pages, etc.), franchise disclosure documents, agreement templates and other similar materials related to the Business.

(8) Assignor hereby assigns, conveys, and transfers to Assignee, and Assignee accepts, all of Submarina’s goodwill of the Business as a going concern.

(9) Assignor warrants and represents that he has not assigned any of the assigned rights to any third party while acting as Chapter 11 Trustee to Submarina’s bankruptcy estate.

(10) In the event there is any inconsistency between this Assignment and the Asset Purchase Agreement that forms the basis of this Assignment, the Asset Purchase Agreement controls.

**WHEREAS**, the parties, intending to be legally bound, have executed this Assignment to be effective as of the Effective Date set forth above.

**ASSIGNOR:**

W. Donald Gieseke, Chapter 7 Trustee  
for the Bankruptcy Estate of Submarina, Inc.

**ASSIGNEE:**

Sinelli Concepts International Inc.  
a Texas corporation

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**  
**Franchise Agreements**

California -- #CA0012 (Santee), #CA0002 (Escondido), #CA0109 (Laguna Niguel), #CA0018 (La Mesa), #CA0053 (Lake Elsinore), #CA0102 (Cypress), #CA0035 (Rancho San Diego), #CA 0024 (Oceanside West), #CA0063 (Genesee), #CA007 (Mira Mesa), #CA0098 (Santa Clarita), #CA0054 (Temecula Redhawk), #CA0060 (Menifee), #CA0061 (Vista-Sycamore Ave.), #CA0040 (Vista South), #CA0155 (Anaheim Hilton), #CA0168 (Murrieta Antelope), #CA0120 (Lancaster), #CA0048 (Murrieta Cal Oaks), #CA0064 (Murrieta Hot Springs), and #CA0068 (Murrieta Sky Canyon) and CA0078 (Wildomar).

Guam – #GU0153, #GU0163, #GU0173, and #GU0175